

ATTACHMENT 10

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS : MDL No. 2002
ANTITRUST LITIGATION : No. 08-MD-02002

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THIS DOCUMENT APPLIES TO: :
ALL ACTIONS :

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS
TWENTY-NINTH JUDICIAL DISTRICT

ASSOCIATED WHOLESALE GROCERS, : Case No.
INC., et al., : 10-cv-2171
Plaintiffs, :
v. :
UNITED EGG PRODUCERS, et al., :
Defendants. :

** HIGHLY CONFIDENTIAL **

Wednesday, April 23, 2014

Videotaped deposition of KAREN
BROWN, taken at the offices of Pepper
Hamilton LLP, 600 Fourteenth Street, N.W.,
Washington, D.C. 20005, beginning at 10:54
a.m., before LINDA ROSSI RIOS, a Federally
Approved RPR, CCR and Notary Public.

<p style="text-align: right;">2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 KENNY NACHWALTER</p> <p>4 BY: DOUGLAS H. PATTON, ESQUIRE</p> <p>5 and</p> <p>6 SAMUEL J. RANDALL, ESQUIRE</p> <p>7 1100 Miami Center</p> <p>8 201 South Biscayne Boulevard</p> <p>9 Miami, FL 33131</p> <p>10 305-373-1000</p> <p>11 dpatton@kennynachwalter.com</p> <p>12 srandall@kennynachwalter.com</p> <p>13 On behalf of Kroger Plaintiffs</p> <p>14</p> <p>15</p> <p>16 QUINN EMANUEL URQUHART & SULLIVAN</p> <p>17 BY: LEE TURNER FRIEDMAN, ESQUIRE</p> <p>18 51 Madison Avenue, 22nd Floor</p> <p>19 New York, NY 10010</p> <p>20 212-849-7129</p> <p>21 leefriedman@quinnemanuel.com</p> <p>22 On behalf of the Direct Purchaser</p> <p>23 Plaintiffs in the MDL Litigation</p> <p>24</p> <p>25</p> <p>16 STRAUS BOISE</p> <p>17 BY: MARK J. SCHIRMER, ESQUIRE</p> <p>18 4041 University Drive</p> <p>19 5th Floor</p> <p>20 Fairfax, VA 22030</p> <p>21 703-764-8700</p> <p>22 mschirmer@strauss-boise.com</p> <p>23 On behalf of Indirect Purchaser Plaintiffs</p> <p>24 (Via teleconference)</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 PORTER, WRIGHT, MORRIS & ARTHUR</p> <p>4 BY: DONALD M. BARNES, ESQUIRE</p> <p>5 1900 K Street, NW</p> <p>6 Suite 1110</p> <p>7 Washington, D.C. 20006</p> <p>8 202-778-3056</p> <p>9 dbarnes@porterwright.com</p> <p>10 On behalf of Rose Acre Farms</p> <p>11</p> <p>12</p> <p>13 FAEGRE BAKER DANIELS</p> <p>14 BY: E. JASON BURKE, ESQUIRE</p> <p>15 311 S. Wacker Drive</p> <p>16 Suite 4400</p> <p>17 Chicago, IL 60606</p> <p>18 317-212-2264</p> <p>19 jason.burke@faegrebd.com</p> <p>20 On behalf of Midwest Poultry Services</p> <p>21 (Via teleconference)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>16 WEIL GOTSHAL & MANGES</p> <p>17 BY: CARRIE M. ANDERSON, ESQUIRE</p> <p>18 1300 Eye Street, NW</p> <p>19 Suite 900</p> <p>20 Washington, D.C. 20005</p> <p>21 202-682-7231</p> <p>22 carrie.anderson@weil.com</p> <p>23 On behalf of Michael Foods</p> <p>24</p> <p>25</p> <p>20 HUTCHINSON P.A.</p> <p>21 BY: TROY J. HUTCHINSON, ESQUIRE</p> <p>22 1907 Wayzata Boulevard E</p> <p>23 Suite 330</p> <p>24 Wayzata, MN 55391</p> <p>25 952-215-0141</p> <p>On behalf of Sparboe Farms</p>
<p style="text-align: right;">3</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 STUEVE SIEGEL HANSON LLP</p> <p>4 BY: BRADLEY T. WILDERS, ESQUIRE</p> <p>5 460 Nichols Road</p> <p>6 Suite 200</p> <p>7 Kansas City, MO 64112</p> <p>8 816-714-7126</p> <p>9 wilders@stuevesiegel.com</p> <p>10 On behalf of the Plaintiffs in the Kansas</p> <p>11 Associated Wholesale Grocers litigation</p> <p>12</p> <p>13</p> <p>14 PEPPER HAMILTON, LLP</p> <p>15 BY: EVAN W. DAVIS, ESQUIRE</p> <p>16 and</p> <p>17 ROBIN P. SUMNER, ESQUIRE</p> <p>18 3000 Two Logan Square</p> <p>19 18th & Arch Street</p> <p>20 Philadelphia, PA 19103</p> <p>21 215-981-4245</p> <p>22 215-981-4652</p> <p>23 davisew@pepperlaw.com</p> <p>24 sumnerr@pepperlaw.com</p> <p>25 On behalf of United Egg Producers and the</p> <p>United States Egg Marketers</p> <p>17 CROWELL & MORING</p> <p>18 BY: KATHLEEN CLAIR, ESQUIRE</p> <p>19 1001 Pennsylvania Avenue NW</p> <p>20 Washington D.C. 20004-2595</p> <p>21 202-624-2951</p> <p>22 kclair@crowell.com</p> <p>23 On behalf of Daybreak Foods</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 EIMER STAHL, LLP</p> <p>4 BY: VANESSA G. JACOBSEN, ESQUIRE</p> <p>5 224 South Michigan Avenue</p> <p>6 Suite 1100</p> <p>7 Chicago, IL 60604</p> <p>8 312-660-7604</p> <p>9 vjacobsen@eimerstahl.com</p> <p>10 On behalf of Moark, LLC</p> <p>11 and Norco Ranch, Inc.</p> <p>12 (Via teleconference)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>10 GIBSON DUNN & CRUTCHER</p> <p>11 BY: JASON C. MCKENNEY, ESQUIRE</p> <p>12 2100 McKinney Avenue</p> <p>13 Suite 1100</p> <p>14 Dallas, TX 75201-6912</p> <p>15 214-698-3279</p> <p>16 jmckenney@gibsondunn.com</p> <p>17 On behalf of the Defendant, Cal-Maine</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>15 GEORGE GREEN, ESQUIRE</p> <p>16 General Counsel Food Marketing Institute</p> <p>17 2345 Crystal Drive</p> <p>18 Suite 800</p> <p>19 Arlington VA 22202</p> <p>20 202-220-0613</p> <p>21 On behalf of the Witness</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>20 ALSO PRESENT:</p> <p>21 KIMBERLY JOHNSON, Videographer</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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11	13
<p>1 DEPOSITION SUPPORT INDEX</p> <p>2</p> <p>3 DIRECTION TO WITNESS NOT TO ANSWER</p> <p>4 Page Line Page Line</p> <p>5 (None)</p> <p>6</p> <p>7</p> <p>8</p> <p>9 REQUEST FOR PRODUCTION OF DOCUMENTS</p> <p>10 Page Line</p> <p>11 362</p> <p>12</p> <p>13</p> <p>14 STIPULATIONS</p> <p>15 Page Line</p> <p>16 (None)</p> <p>17</p> <p>18 QUESTIONS MARKED</p> <p>19 Page Line</p> <p>20 (None)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 the parties they represent.</p> <p>3 MR. GREEN: George Green for the</p> <p>4 witness.</p> <p>5 MR. RANDALL: Sam Randall from</p> <p>6 Kenny Nachwalter on behalf of Kroger</p> <p>7 plaintiffs.</p> <p>8 MR. PATTON: Doug Patton with</p> <p>9 Kenny Nachwalter, also on behalf of</p> <p>10 the Kroger plaintiffs.</p> <p>11 MR. WILDERS: Brad Wilders from</p> <p>12 Stueve Siegel Hanson on behalf of the</p> <p>13 plaintiffs in the Kansas Associated</p> <p>14 Wholesale Grocers litigation.</p> <p>15 MS. FRIEDMAN: Lee Turner</p> <p>16 Friedman on behalf -- from Quinn</p> <p>17 Emanuel on behalf of Direct Purchaser</p> <p>18 Plaintiffs in the MDL litigation.</p> <p>19 MS. SUMNER: Robin Sumner,</p> <p>20 Pepper Hamilton on behalf of United</p> <p>21 Egg Producers and United States Egg</p> <p>22 Marketers.</p> <p>23 MR. DAVIS: Evan Davis from</p> <p>24 Pepper Hamilton on behalf of United</p> <p>25 Egg Producers and United States Egg</p>

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<p style="text-align: right;">14</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Marketers.</p> <p>3 MS. ANDERSON: Carrie Anderson,</p> <p>4 Weil Gotshal on behalf of Michael</p> <p>5 Foods.</p> <p>6 MS. CLAIR: Kathleen Clair with</p> <p>7 Crowell & Moring on behalf of Daybreak</p> <p>8 Foods.</p> <p>9 MR. BARNES: Don Barnes with</p> <p>10 Porter Wright on behalf of Rose Acre</p> <p>11 Farms.</p> <p>12 MR. MCKENNEY: Jason McKenney</p> <p>13 from Gibson Dunn & Crutcher on behalf</p> <p>14 of Cal-Maine Foods.</p> <p>15 VIDEOGRAPHER: On the phone?</p> <p>16 MR. SCHIRMER: Mark Schirmer,</p> <p>17 Straus & Boies on behalf of the</p> <p>18 indirect purchasers.</p> <p>19 MS. JACOBSEN: Vanessa Jacobsen</p> <p>20 on Eimer Stahl for defendants, Moark,</p> <p>21 LLC. and Norco Ranch, Inc.</p> <p>22 MR. BURKE: Jason Burke with</p> <p>23 Faegre Baker Daniels on behalf of</p> <p>24 Midwest Poultry Services.</p> <p>25 VIDEOGRAPHER: At this time our</p>	<p style="text-align: right;">16</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 reminders before we get started. I'm going</p> <p>3 to be asking you a series of questions this</p> <p>4 morning. If you don't understand my question</p> <p>5 or need a clarification, please ask and I'd</p> <p>6 be happy to do my best to provide that. If</p> <p>7 you don't ask, I'm going to assume that you</p> <p>8 understand the question. Is that okay with</p> <p>9 you?</p> <p>10 A. Yes.</p> <p>11 Q. If you need a break, please ask</p> <p>12 and we can take a break at any time.</p> <p>13 Is there any reason or thing</p> <p>14 that will prevent you from testifying</p> <p>15 truthfully and accurately here today?</p> <p>16 A. No.</p> <p>17 - - -</p> <p>18 (Exhibit Brown-1, Subpoena, was</p> <p>19 marked for identification.)</p> <p>20 - - -</p> <p>21 BY MS. SUMNER:</p> <p>22 Q. Ms. Brown, I'm showing you a</p> <p>23 document that's been marked as Brown</p> <p>24 Exhibit 1. It's a subpoena issued from the</p> <p>25 United States District Court for the Western</p>
<p style="text-align: right;">15</p> <p>1 court reporter, Linda Rossi,</p> <p>2 representing Veritext will swear in</p> <p>3 the witness and we can proceed.</p> <p>4 - - -</p> <p>5 KAREN BROWN, after having been</p> <p>6 duly sworn, was examined and testified</p> <p>7 as follows:</p> <p>8 - - -</p> <p>9 EXAMINATION</p> <p>10 - - -</p> <p>11 BY MS. SUMNER:</p> <p>12 Q. Good morning, Ms. Brown. My</p> <p>13 name is Robin Sumner. I'm an attorney with</p> <p>14 Pepper Hamilton, and I'll be taking your</p> <p>15 deposition this morning.</p> <p>16 Could you, please, state your</p> <p>17 full name and current address for the record?</p> <p>18 A. Karen Huter Brown, 1445 McLean</p> <p>19 Mews Court, McLean, Virginia 22101.</p> <p>20 Q. Ms. Brown, have you been</p> <p>21 deposed before?</p> <p>22 A. Yes.</p> <p>23 Q. You're familiar with the</p> <p>24 process, I'll just go over a couple of quick</p> <p>25</p>	<p style="text-align: right;">17</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 District of Virginia.</p> <p>3 Do you recognize this document?</p> <p>4 A. No.</p> <p>5 Q. Have you ever seen this before?</p> <p>6 A. No.</p> <p>7 Q. Do you understand that it is a</p> <p>8 subpoena for your testimony and for documents</p> <p>9 served by defendants in this litigation?</p> <p>10 A. Yes.</p> <p>11 Q. And do you understand that you</p> <p>12 are here to testify under oath pursuant to</p> <p>13 this subpoena?</p> <p>14 A. Yes.</p> <p>15 Q. Do you understand that the</p> <p>16 testimony you give today can be used for --</p> <p>17 at trial in the litigation in Pennsylvania</p> <p>18 and in Kansas?</p> <p>19 A. Yes.</p> <p>20 Q. Did you prepare for this</p> <p>21 deposition?</p> <p>22 A. I talked with counsel.</p> <p>23 Q. Did you speak with anyone other</p> <p>24 than counsel in preparation for your</p> <p>25 deposition?</p>

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<p style="text-align: right;">18</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. When you refer to "counsel,"</p> <p>4 are you referring to your counsel Mr. Green?</p> <p>5 A. I am.</p> <p>6 Q. Did you speak with any other</p> <p>7 counsel in preparation for this deposition?</p> <p>8 A. No.</p> <p>9 Q. Have you at any time spoken</p> <p>10 with any counsel in this room other than Mr.</p> <p>11 Green?</p> <p>12 A. Two years ago Mr. Patton.</p> <p>13 Q. And what did you speak with</p> <p>14 Mr. Patton about when you talked with him two</p> <p>15 years ago?</p> <p>16 A. He just called to inform me</p> <p>17 that this case -- about the case, that it</p> <p>18 involved -- that I may be called as a</p> <p>19 witness.</p> <p>20 Q. Did he provide any substance</p> <p>21 about the case during your conversation?</p> <p>22 A. Only in general.</p> <p>23 Q. What do you recall about what</p> <p>24 he said to you?</p> <p>25 A. I don't really recall what he</p>	<p style="text-align: right;">20</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 your conversation with Mr. Patton?</p> <p>3 A. No.</p> <p>4 Q. Did you ever speak to</p> <p>5 Mr. Patton again after that --</p> <p>6 A. No.</p> <p>7 Q. -- initial conversation?</p> <p>8 A. Not that I recall.</p> <p>9 Q. The court reporter is going to</p> <p>10 be working probably harder than any of us</p> <p>11 today. She needs to get down on the record</p> <p>12 everything that's said. So it's helpful for</p> <p>13 her if you and I just let each other finish</p> <p>14 before we talk. So give me a minute to</p> <p>15 finish my questions before you answer just so</p> <p>16 she can catch up.</p> <p>17 A. Okay.</p> <p>18 Q. I think we're both going to</p> <p>19 need to slow down or she's going to be the</p> <p>20 one asking for a break very quickly.</p> <p>21 Other than Mr. Patton, have you</p> <p>22 spoken with any other lawyers about this</p> <p>23 case?</p> <p>24 A. No.</p> <p>25 Q. Did you talk to anyone at FMI?</p>
<p style="text-align: right;">19</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 said exactly.</p> <p>3 Q. Do you recall anything at all?</p> <p>4 A. It's about eggs.</p> <p>5 Q. Did he explain to you the</p> <p>6 allegations in the case?</p> <p>7 A. Yes.</p> <p>8 Q. And what did he explain to you</p> <p>9 about those allegations?</p> <p>10 A. That the -- there was a</p> <p>11 question, an allegation of potential price</p> <p>12 fixing on the part of egg producers.</p> <p>13 Q. Do you recall anything else?</p> <p>14 A. Nope.</p> <p>15 Q. What was your reaction to</p> <p>16 Mr. Patton's description of the allegations</p> <p>17 in the case?</p> <p>18 A. I hope the case settles was my</p> <p>19 reaction.</p> <p>20 Q. Why is that?</p> <p>21 A. I would not have to be here</p> <p>22 today.</p> <p>23 Q. Any other reaction?</p> <p>24 A. No.</p> <p>25 Q. Anything else you recall about</p>	<p style="text-align: right;">21</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. Are you currently employed, Ms.</p> <p>4 Brown?</p> <p>5 A. No.</p> <p>6 Q. What was your last employment?</p> <p>7 A. Food Marketing Institute. I</p> <p>8 retired on January 30, 2009.</p> <p>9 Q. How long were you employed by</p> <p>10 the Food Marketing Institute?</p> <p>11 A. 40 years.</p> <p>12 Q. And what was your position at</p> <p>13 FMI when you retired?</p> <p>14 A. I was a senior vice president.</p> <p>15 Q. What were your responsibilities</p> <p>16 in that role as senior vice president?</p> <p>17 A. I had an eclectic portfolio</p> <p>18 that included marketing and communications,</p> <p>19 food safety membership, issues management,</p> <p>20 crisis management.</p> <p>21 Q. Did it include animal welfare?</p> <p>22 A. As an issue, yes.</p> <p>23 Q. How long had you been in -- did</p> <p>24 you hold the role of senior vice president at</p> <p>25 FMI?</p>

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<p style="text-align: right;">22</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't recall. Mid '90s.</p> <p>3 Q. And what did you do for FMI</p> <p>4 prior to becoming senior vice president?</p> <p>5 A. I was vice president.</p> <p>6 Q. Were your responsibilities</p> <p>7 substantially similar to those you held as</p> <p>8 senior vice president?</p> <p>9 A. No.</p> <p>10 Q. What did you do as vice</p> <p>11 president?</p> <p>12 A. I was vice president of</p> <p>13 communications. Prior to that, I was vice</p> <p>14 president of consumer affairs.</p> <p>15 Q. And those roles ended in the</p> <p>16 early 1990s?</p> <p>17 A. No. I was vice president of</p> <p>18 consumer affairs until '81, and I was vice</p> <p>19 president of communications until I became a</p> <p>20 senior VP.</p> <p>21 Q. And that was in the early '90s?</p> <p>22 A. I think.</p> <p>23 Q. In your -- over the course of</p> <p>24 your 40-year employment with FMI, did you</p> <p>25 have regular contact with FMI's members?</p>	<p style="text-align: right;">24</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: My knowledge about</p> <p>3 the retail food industry came from</p> <p>4 many sources.</p> <p>5 BY MS. SUMNER:</p> <p>6 Q. What were --</p> <p>7 A. Research, education, colleagues</p> <p>8 in -- within FMI, visiting stores, talking</p> <p>9 with members about issues that they were</p> <p>10 concerned about, that FMI could help them</p> <p>11 with.</p> <p>12 Q. Through all of those things and</p> <p>13 your contact with FMI's members, did you gain</p> <p>14 an understanding as to how their businesses</p> <p>15 operated?</p> <p>16 A. Individually, no. In general,</p> <p>17 yes.</p> <p>18 Q. Through the course of your</p> <p>19 employment at FMI and the contact with the</p> <p>20 members, did you gain an understanding of the</p> <p>21 concerns that they had about what was going</p> <p>22 on in the industry at various points in time?</p> <p>23 MR. RANDALL: Objection to form.</p> <p>24 MR. WILDERS: And also vague.</p> <p>25 BY MS. SUMNER:</p>
<p style="text-align: right;">23</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. WILDERS: Objection. Vague.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. SUMNER:</p> <p>5 Q. Did you come to know them well</p> <p>6 during that time?</p> <p>7 MR. WILDERS: Objection. Vague.</p> <p>8 THE WITNESS: Can you define</p> <p>9 what you mean by "know them well"?</p> <p>10 BY MS. SUMNER:</p> <p>11 Q. Well, did you attend meetings</p> <p>12 with them?</p> <p>13 A. Yes.</p> <p>14 Q. And did you attend industry</p> <p>15 functions with them?</p> <p>16 A. Yes.</p> <p>17 Q. Did you talk to them on the</p> <p>18 phone?</p> <p>19 A. Yes.</p> <p>20 Q. Did you acquire a working</p> <p>21 knowledge of the retail food business through</p> <p>22 that contact and during the course of your</p> <p>23 employment with FMI?</p> <p>24 MR. WILDERS: Objection.</p> <p>25 Compound and vague.</p>	<p style="text-align: right;">25</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. You can go ahead and answer the</p> <p>3 question. They're going to make objections</p> <p>4 to preserve them for the record, but unless</p> <p>5 your counsel instructs you not to answer, you</p> <p>6 need to answer the question.</p> <p>7 A. Can you repeat the question?</p> <p>8 Q. Sure. Through the course of</p> <p>9 your employment at FMI and the contact that</p> <p>10 you had with the members that you just</p> <p>11 described during that employment, did you</p> <p>12 gain an understanding of the concerns they</p> <p>13 had about what was going on in the industry?</p> <p>14 MR. RANDALL: Objection to form.</p> <p>15 MR. WILDERS: Same objection.</p> <p>16 THE WITNESS: Mainly the</p> <p>17 concerns that they shared with me were</p> <p>18 concerns that related to their</p> <p>19 customers.</p> <p>20 BY MS. SUMNER:</p> <p>21 Q. Did you gain an understanding</p> <p>22 of their concerns about animal welfare?</p> <p>23 MR. RANDALL: Objection to form.</p> <p>24 MR. WILDERS: Objection. Vague.</p> <p>25 THE WITNESS: From the</p>

7 (Pages 22 to 25)

<p style="text-align: right;">26</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 standpoint as an issue that was</p> <p>3 affecting their customers, yes.</p> <p>4 BY MS. SUMNER:</p> <p>5 Q. What about as an issue that was</p> <p>6 affecting their businesses?</p> <p>7 MR. WILDERS: Same objection.</p> <p>8 THE WITNESS: They were most</p> <p>9 concerned about how it was affecting</p> <p>10 their customers.</p> <p>11 BY MS. SUMNER:</p> <p>12 Q. Why?</p> <p>13 A. They were not -- they were not</p> <p>14 experiencing -- they had some letters from</p> <p>15 PETA that they had received, and that</p> <p>16 concerned them as to how to answer it, and</p> <p>17 how it would affect what PETA's actions may</p> <p>18 have contributed to their own public image.</p> <p>19 Q. And when you say "to their own</p> <p>20 public image," you mean the public image of</p> <p>21 your members?</p> <p>22 MR. WILDERS: Objection.</p> <p>23 Leading.</p> <p>24 THE WITNESS: Repeat the</p> <p>25 question?</p>	<p style="text-align: right;">28</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 it, let me know, I'm just trying to</p> <p>3 understand it.</p> <p>4 I asked you the question -- you</p> <p>5 said they were most concerned about how it</p> <p>6 was affecting their customers. I asked you</p> <p>7 the question why and your response was, they</p> <p>8 had received some letters from PETA that they</p> <p>9 had received and that concerned them as to</p> <p>10 how to answer it and how it would affect what</p> <p>11 PETA's actions may have contributed to their</p> <p>12 own public image.</p> <p>13 My question to you is, when you</p> <p>14 say "their own public image," you're talking</p> <p>15 about the public image of your members?</p> <p>16 MR. WILDERS: Objection.</p> <p>17 Leading.</p> <p>18 THE WITNESS: Correct. The</p> <p>19 industry as a whole.</p> <p>20 BY MS. SUMNER:</p> <p>21 Q. When you say "the industry,"</p> <p>22 what industry are you referring to?</p> <p>23 A. I'm talking about the</p> <p>24 supermarket industry.</p> <p>25 Q. Let me finish the question or</p>
<p style="text-align: right;">27</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. SUMNER:</p> <p>3 Q. You used the phrase --</p> <p>4 A. I'm trying to understand your</p> <p>5 context.</p> <p>6 Q. You said -- testified that they</p> <p>7 were concerned -- that your members were</p> <p>8 concerned about how PETA's actions may have</p> <p>9 contributed to their own public image.</p> <p>10 A. I didn't say contribute.</p> <p>11 Q. You did say contribute.</p> <p>12 A. I said affected. Might affect.</p> <p>13 MR. RANDALL: Objection to form.</p> <p>14 MR. WILDERS: Badgering. And</p> <p>15 argumentative.</p> <p>16 MS. SUMNER: If we could just</p> <p>17 have one objection for all, it would</p> <p>18 be helpful just to speed this along</p> <p>19 because we have limited time with this</p> <p>20 witness today and I don't think we</p> <p>21 want to keep her here unnecessarily.</p> <p>22 BY MS. SUMNER:</p> <p>23 Q. I'm just going to read back one</p> <p>24 of your answers that the court reporter took</p> <p>25 down, and if you want to modify it or change</p>	<p style="text-align: right;">29</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 she's not going to be able to get it down.</p> <p>3 Who were FMI's members?</p> <p>4 A. FMI's members were large</p> <p>5 chains, regional chains, small companies,</p> <p>6 independent operators, cooperative</p> <p>7 wholesalers and voluntary wholesalers.</p> <p>8 Q. In what industry?</p> <p>9 A. The supermarket industry.</p> <p>10 Q. Now, through your contact with</p> <p>11 FMI's members over the 40 years that you were</p> <p>12 employed by FMI, did you gain an</p> <p>13 understanding of those member's views on</p> <p>14 animal welfare?</p> <p>15 MR. WILDERS: Objection. Vague.</p> <p>16 THE WITNESS: Animal welfare was</p> <p>17 a fairly new issue. It did not span</p> <p>18 40 years. The issue became a public</p> <p>19 issue for food retail in general in</p> <p>20 the late '90s, beginning of 2000.</p> <p>21 BY MS. SUMNER:</p> <p>22 Q. And once it became an issue for</p> <p>23 FMI's members, in the course of your</p> <p>24 employment at FMI, did you gain an</p> <p>25 understanding of those members' views on</p>

8 (Pages 26 to 29)

<p style="text-align: right;">30</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 animal welfare?</p> <p>3 MR. WILDERS: Objection.</p> <p>4 Assumes facts not in evidence, and</p> <p>5 vague as to members.</p> <p>6 BY MS. SUMNER:</p> <p>7 A. They didn't really express</p> <p>8 their views. They were looking to FMI to</p> <p>9 help them approach the issue in a way that</p> <p>10 would enhance or improve the humane handling</p> <p>11 of farm animals.</p> <p>12 Q. And what was your understanding</p> <p>13 as to why those members were looking to FMI</p> <p>14 to help them approach the animal welfare</p> <p>15 issue?</p> <p>16 MR. WILDERS: Vague. Assumes</p> <p>17 facts not in evidence.</p> <p>18 THE WITNESS: They had an</p> <p>19 example from the quick serve industry</p> <p>20 where the animal rights organizations</p> <p>21 were attacking them publicly and</p> <p>22 asking them to take specific actions.</p> <p>23 The response of some of the members of</p> <p>24 the quick serve industry was to come</p> <p>25 up with specific guidelines that they</p>	<p style="text-align: right;">32</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: I think it's good</p> <p>3 business to get ahead of an issue.</p> <p>4 BY MS. SUMNER:</p> <p>5 Q. Do you have an understanding of</p> <p>6 why they wanted to get ahead of the issue?</p> <p>7 A. They certainly wanted to be</p> <p>8 able to have an approach that was going to</p> <p>9 enhance the humane handling of animals and to</p> <p>10 be able to publicize what their approach was</p> <p>11 going to be so that their customers would</p> <p>12 know what their involvement was. There were</p> <p>13 public campaigns being undertaken, executed</p> <p>14 against the members of the quick serve</p> <p>15 industry by PETA and other animal rights</p> <p>16 organizations, and that's a very</p> <p>17 uncomfortable position for a company to be</p> <p>18 in, and it makes it difficult for them to</p> <p>19 tell their own story and play catch up.</p> <p>20 Q. And was that what was happening</p> <p>21 to your members?</p> <p>22 MR. WILDERS: Objection.</p> <p>23 THE WITNESS: Our members were</p> <p>24 not at that point on the -- being</p> <p>25 attacked.</p>
<p style="text-align: right;">31</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 as an individual company, I'm not</p> <p>3 talking about the supermarket industry</p> <p>4 now, I'm talking about the quick serve</p> <p>5 restaurant industry, to come up with</p> <p>6 specific actions that would enhance</p> <p>7 the humane handling of farm animals,</p> <p>8 particularly in the area of space</p> <p>9 allocation. Because there were many</p> <p>10 different proposals or requirements by</p> <p>11 individual companies in the quick</p> <p>12 serve industry, the supermarket</p> <p>13 industry at that time was under the</p> <p>14 radar, and they felt that it would be</p> <p>15 a better approach to try to get ahead</p> <p>16 of the issue in a way that would</p> <p>17 improve humane handling and also give</p> <p>18 them a story they could tell their</p> <p>19 customers about what they were doing</p> <p>20 in the area of humane handling.</p> <p>21 BY MS. SUMNER:</p> <p>22 Q. Why did FMI's members want to</p> <p>23 get ahead of the issue?</p> <p>24 MR. WILDERS: Objection. Calls</p> <p>25 for the witness to speculate.</p>	<p style="text-align: right;">33</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. SUMNER:</p> <p>3 Q. But they wanted to avoid that?</p> <p>4 MR. WILDERS: Objection. Calls</p> <p>5 for speculation.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MS. SUMNER:</p> <p>8 Q. You mentioned before, you said</p> <p>9 "particularly in the area of space</p> <p>10 allocation."</p> <p>11 A. Correct.</p> <p>12 Q. What was it about space</p> <p>13 allocation that made that a focus for your</p> <p>14 members?</p> <p>15 A. It wasn't that it was the</p> <p>16 focus. But it was the -- it was the -- one</p> <p>17 of the issues that was front and center from</p> <p>18 the standpoint of the animal rights</p> <p>19 organizations. They were concerned about</p> <p>20 gestation stalls with pregnant sows. They</p> <p>21 were concerned about space in the egg laying</p> <p>22 industry from the standpoint of the cages</p> <p>23 that the chickens were being raised in.</p> <p>24 Q. Does FMI have an animal welfare</p> <p>25 program, Ms. Brown?</p>

9 (Pages 30 to 33)

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<p style="text-align: right;">34</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Does it currently have an</p> <p>3 animal welfare program?</p> <p>4 Q. Yes.</p> <p>5 A. I wouldn't know that.</p> <p>6 Q. Did it have an animal welfare</p> <p>7 program as of the time you departed in 2009?</p> <p>8 A. It had established a program,</p> <p>9 yes.</p> <p>10 Q. When did FMI first become</p> <p>11 involved in animal welfare?</p> <p>12 A. In my recollection, the end of</p> <p>13 2000.</p> <p>14 - - -</p> <p>15 (Exhibit Brown-2, The Food</p> <p>16 Marketing Institute and the National</p> <p>17 Council of Chain restaurants: animal</p> <p>18 welfare and the retail food industry</p> <p>19 in the United States of America</p> <p>20 article, Bates CM00731181 -</p> <p>21 CM00731189, was marked for</p> <p>22 identification.)</p> <p>23 - - -</p> <p>24 BY MS. SUMNER:</p> <p>25 Q. I'd like to show you a document</p>	<p style="text-align: right;">36</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 OIE was -- had representatives from countries</p> <p>3 all over the world, and the focus of this</p> <p>4 particular conference was animal welfare.</p> <p>5 Q. And OIE invited you to make a</p> <p>6 presentation at that conference?</p> <p>7 A. Correct.</p> <p>8 Q. When was that presentation?</p> <p>9 A. Good question. Let's see</p> <p>10 what's the date on here. It was in 2005.</p> <p>11 Probably March, April, May.</p> <p>12 Q. Was this article published?</p> <p>13 A. Yes, in their report.</p> <p>14 Q. I'm sorry?</p> <p>15 A. In their report of the</p> <p>16 conference.</p> <p>17 Q. In OIE's report?</p> <p>18 A. Correct.</p> <p>19 Q. And do you know when it was</p> <p>20 published?</p> <p>21 A. I don't recall.</p> <p>22 Q. If you look at the top of</p> <p>23 what's been marked as Brown-2, there's a 2005</p> <p>24 date. Does that refresh your memory as to</p> <p>25 when it was published?</p>
<p style="text-align: right;">35</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 that has been marked as Brown Exhibit 2. If</p> <p>3 you could just take a moment to look at this</p> <p>4 document.</p> <p>5 My first question is, do you</p> <p>6 recognize this document, Ms. Brown?</p> <p>7 A. I wrote it.</p> <p>8 Q. What is it?</p> <p>9 A. It is a summary of a</p> <p>10 presentation that was made to the OIE in</p> <p>11 Paris, which is an international organization</p> <p>12 that the United States belongs to.</p> <p>13 Q. Why did you write this article?</p> <p>14 A. Because that was their format.</p> <p>15 You made a presentation, but they needed an</p> <p>16 article that would be in more detail and</p> <p>17 would be published in the report of the</p> <p>18 conference.</p> <p>19 Q. And what is OIE?</p> <p>20 A. It's French.</p> <p>21 Q. Can you describe for me</p> <p>22 generally what your understanding is as to</p> <p>23 the purpose or charter of that organization?</p> <p>24 A. Well, from -- no. But from the</p> <p>25 standpoint of the presentation that I made,</p>	<p style="text-align: right;">37</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes. I would assume that it</p> <p>3 was published in 2005, yes.</p> <p>4 - - -</p> <p>5 (Exhibit Brown-3, PowerPoint</p> <p>6 presentation, Bates FMI-003053 -</p> <p>7 FMI-003077, was marked for</p> <p>8 identification.)</p> <p>9 - - -</p> <p>10 BY MS. SUMNER:</p> <p>11 Q. I'm going to show you a</p> <p>12 document that's been marked as Brown-3.</p> <p>13 A. Oh, 2004.</p> <p>14 Q. Do you recognize this document,</p> <p>15 Ms. Brown?</p> <p>16 A. I do.</p> <p>17 Q. Can you tell me what this is?</p> <p>18 A. This is the PowerPoint that I</p> <p>19 used with my presentation.</p> <p>20 Q. So this is the PowerPoint from</p> <p>21 the presentation that you were talking about</p> <p>22 in connection with the article that has --</p> <p>23 A. Correct.</p> <p>24 Q. -- been marked as Brown-2?</p> <p>25 Let's go back to Brown-2 for a</p>

10 (Pages 34 to 37)

<p style="text-align: right;">38</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 moment. When you wrote this article, did you</p> <p>3 attempt to be truthful and accurate?</p> <p>4 A. Yes.</p> <p>5 Q. And before the article was</p> <p>6 published, did you review it to ensure its</p> <p>7 accuracy?</p> <p>8 A. I don't understand the</p> <p>9 question.</p> <p>10 Q. Before this article was</p> <p>11 published, did you review it?</p> <p>12 A. I wrote it. Oh, I did not see</p> <p>13 it before it was published by the OIE.</p> <p>14 Q. But you provided it at some</p> <p>15 point to the OIE?</p> <p>16 A. I did. Without the British</p> <p>17 spellings.</p> <p>18 Q. Other than the British</p> <p>19 spellings, did OIE make any changes to your</p> <p>20 article before publication?</p> <p>21 A. I don't know that.</p> <p>22 Q. Sitting here today, do you</p> <p>23 believe that this article is accurate?</p> <p>24 MR. WILDERS: Objection.</p> <p>25 THE WITNESS: It was accurate at</p>	<p style="text-align: right;">40</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. From what sources did you gain</p> <p>4 that knowledge?</p> <p>5 A. Many sources.</p> <p>6 Q. Can you name them for me?</p> <p>7 MR. GREEN: Wait for her to</p> <p>8 finish. Wait for her to finish the</p> <p>9 question.</p> <p>10 BY MS. SUMNER:</p> <p>11 Q. Can you name those sources for</p> <p>12 me, please?</p> <p>13 A. Reading, meetings,</p> <p>14 conversations with our animal welfare</p> <p>15 experts, conversations with producer groups.</p> <p>16 Q. What about conversations with</p> <p>17 your members?</p> <p>18 MR. WILDERS: Objection.</p> <p>19 Leading.</p> <p>20 THE WITNESS: Conversations</p> <p>21 with -- I don't -- whose members?</p> <p>22 BY MS. SUMNER:</p> <p>23 Q. Your members, FMI's members.</p> <p>24 A. Yes.</p> <p>25 Q. What was the impetus for FMI's</p>
<p style="text-align: right;">39</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 the time I wrote it.</p> <p>3 BY MS. SUMNER:</p> <p>4 Q. And are the statements that you</p> <p>5 made in this article based on your own</p> <p>6 personal knowledge?</p> <p>7 A. I don't understand the</p> <p>8 question.</p> <p>9 Q. Well, what was the -- you make</p> <p>10 many statements throughout the course of this</p> <p>11 article. Correct?</p> <p>12 A. Yes.</p> <p>13 Q. What is the basis for those</p> <p>14 statements?</p> <p>15 A. Could you give me something</p> <p>16 more specific as a question?</p> <p>17 Q. Where did you gain the</p> <p>18 knowledge that you set forth in this article?</p> <p>19 A. With my work on the issue with</p> <p>20 animal welfare.</p> <p>21 Q. So did you acquire it in the</p> <p>22 course of your employment at FMI?</p> <p>23 A. Excuse me?</p> <p>24 Q. Did you gain that knowledge</p> <p>25 during the course of your employment at FMI?</p>	<p style="text-align: right;">41</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 animal welfare program?</p> <p>3 MR. GREEN: Asked and answered.</p> <p>4 MR. WILDERS: Same objection.</p> <p>5 THE WITNESS: You want me to</p> <p>6 answer it again? I don't want -- I</p> <p>7 would -- the impetus for our program?</p> <p>8 BY MS. SUMNER:</p> <p>9 Q. Yeah. Why did FMI create an</p> <p>10 animal welfare program?</p> <p>11 A. FMI created an animal welfare</p> <p>12 program because it wanted to enhance the</p> <p>13 humane handling of farm animals.</p> <p>14 Q. I'd like to direct your</p> <p>15 attention to a -- to the first page of this</p> <p>16 document that's been marked as Brown-2. If</p> <p>17 you could look at the third paragraph. It</p> <p>18 reads, "In 2000, animal rights organizations</p> <p>19 began to demand that individual restaurant</p> <p>20 chain companies force their suppliers to</p> <p>21 follow specific animal welfare guidelines</p> <p>22 developed by activist organizations."</p> <p>23 Is that an accurate statement,</p> <p>24 Ms. Brown?</p> <p>25 A. Yes.</p>

11 (Pages 38 to 41)

<p style="text-align: right;">42</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And then I'd like you to turn</p> <p>3 now to the next page, page 656. I'd like to</p> <p>4 direct your attention to the last sentence of</p> <p>5 the partial paragraph that begins that page.</p> <p>6 The sentence reads, "Believing their tactics</p> <p>7 were achieving success, the activists began</p> <p>8 to approach supermarket chains in the USA,</p> <p>9 making similar demands."</p> <p>10 A. Yes.</p> <p>11 Q. Is that an accurate statement?</p> <p>12 A. Yes.</p> <p>13 Q. Were FMI's members among the</p> <p>14 recipients of the demands that you referred</p> <p>15 to in that sentence?</p> <p>16 A. Yes.</p> <p>17 MR. WILDERS: Objection. Calls</p> <p>18 for speculation.</p> <p>19 BY MS. SUMNER:</p> <p>20 Q. Which members?</p> <p>21 A. They got a list from</p> <p>22 Supermarket News and wrote to everybody.</p> <p>23 Q. And what were the demands that</p> <p>24 the animal activists were making of FMI's</p> <p>25 members?</p>	<p style="text-align: right;">44</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Anyplace in particular?</p> <p>3 Q. You had said before this was</p> <p>4 the presentation, the PowerPoint presentation</p> <p>5 that you gave at the OIE conference. Is that</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. Did you draft this document?</p> <p>9 A. Yes.</p> <p>10 Q. And did you draft it in your</p> <p>11 role as senior vice president of FMI?</p> <p>12 A. Yes.</p> <p>13 Q. Were you invited to make this</p> <p>14 presentation?</p> <p>15 A. I already answered that. Yes.</p> <p>16 Q. And who invited you?</p> <p>17 A. The OIE.</p> <p>18 Q. Was there a person in</p> <p>19 particular --</p> <p>20 A. No.</p> <p>21 Q. -- that you recall?</p> <p>22 A. Not that I recall.</p> <p>23 Q. When you drafted this</p> <p>24 presentation, did you attempt to be truthful</p> <p>25 and accurate?</p>
<p style="text-align: right;">43</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't recall specifically.</p> <p>3 Q. Again, just try to let me</p> <p>4 finish the question so that she can get it</p> <p>5 all down.</p> <p>6 A. I'm sorry.</p> <p>7 Q. So the question was, what was</p> <p>8 the demands that FMI's animal activists were</p> <p>9 making of FMI's members?</p> <p>10 A. I don't recall specifically.</p> <p>11 Q. Do you recall generally?</p> <p>12 A. No.</p> <p>13 Q. Were they animal welfare</p> <p>14 related demands?</p> <p>15 A. Yes.</p> <p>16 Q. Were they asking the members to</p> <p>17 provide more space, to require their</p> <p>18 suppliers to provide adequate space for</p> <p>19 animals, for example?</p> <p>20 MR. WILDERS: Objection.</p> <p>21 THE WITNESS: I don't recall</p> <p>22 specifically.</p> <p>23 BY MS. SUMNER:</p> <p>24 Q. I'd like you to turn to the</p> <p>25 exhibit that has been marked as Brown-3.</p>	<p style="text-align: right;">45</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. PATTON: Objection. Asked</p> <p>3 and answered.</p> <p>4 THE WITNESS: I already answered</p> <p>5 that also.</p> <p>6 BY MS. SUMNER:</p> <p>7 Q. Well, I asked you that question</p> <p>8 about the article, Ms. Brown, not about your</p> <p>9 presentation.</p> <p>10 A. Yes.</p> <p>11 Q. And just for the sake of the</p> <p>12 record, I know this is a trying process, but</p> <p>13 we just need to get down your testimony and</p> <p>14 your best answer on all of the questions</p> <p>15 today. So I'll ask the question again.</p> <p>16 When you drafted this</p> <p>17 presentation, did you attempt to be truthful</p> <p>18 and accurate?</p> <p>19 A. Yes.</p> <p>20 Q. Is what has been marked as</p> <p>21 Brown Exhibit 3 an accurate copy of the</p> <p>22 presentation that you gave at the OIE</p> <p>23 conference in 2004?</p> <p>24 A. Yes.</p> <p>25 MR. WILDERS: Objection. She</p>

12 (Pages 42 to 45)

<p style="text-align: right;">46</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 hasn't even had time to look at it.</p> <p>3 BY MS. SUMNER:</p> <p>4 Q. And are the statements that are</p> <p>5 expressed in the presentation truthful and</p> <p>6 accurate?</p> <p>7 MR. WILDERS: Asked and</p> <p>8 answered.</p> <p>9 THE WITNESS: I've already</p> <p>10 answered that.</p> <p>11 BY MS. SUMNER:</p> <p>12 Q. I asked you actually if you</p> <p>13 attempted to be truthful and accurate. Now</p> <p>14 I'm asking you take a moment and look at the</p> <p>15 presentation and, please, answer the question</p> <p>16 as to whether the statements that are</p> <p>17 expressed in the presentation are truthful</p> <p>18 and accurate?</p> <p>19 MR. WILDERS: Argumentative.</p> <p>20 MS. SUMNER: We need to lay the</p> <p>21 foundation for admissibility at trial.</p> <p>22 So these aren't objectionable</p> <p>23 questions and I would appreciate your</p> <p>24 not wasting a lot of time on this and</p> <p>25 let us move along with the witness.</p>	<p style="text-align: right;">48</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And do you have any reason to</p> <p>3 think that they're not still today?</p> <p>4 A. I wouldn't have a clue.</p> <p>5 Q. I'd like to direct your</p> <p>6 attention on Brown-3 to the second page which</p> <p>7 bears the Bates number at the bottom</p> <p>8 FMI-003054. It reads, "SUPERMARKETS AND</p> <p>9 ANIMAL WELFARE, How We Arrived At Where We</p> <p>10 Are."</p> <p>11 Is that an accurate description</p> <p>12 of what this presentation was about?</p> <p>13 A. To the extent it's a</p> <p>14 description of where -- of what we had done</p> <p>15 to that point in time.</p> <p>16 Q. And that's what the</p> <p>17 presentation was about?</p> <p>18 A. Correct.</p> <p>19 Q. So it outlines the steps that</p> <p>20 were taken in connection with the development</p> <p>21 and implementation of FMI's animal welfare</p> <p>22 policy and program?</p> <p>23 A. Yes.</p> <p>24 Q. If you turn to the next page</p> <p>25 which bears the Bates number 3055 at the</p>
<p style="text-align: right;">47</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. WILDERS: It's not a waste</p> <p>3 of time. I'm going to make</p> <p>4 appropriate objections.</p> <p>5 MS. ANDERSON: You have form and</p> <p>6 foundation, Counsel, that's it.</p> <p>7 MS. SUMNER: We need to lay</p> <p>8 foundation and if you insist, we're</p> <p>9 going to take your objection time out</p> <p>10 of your time at the end. I'm sorry,</p> <p>11 but we have limited time with this</p> <p>12 witness today who has been nice enough</p> <p>13 to come help us out.</p> <p>14 MR. WILDERS: You guys objected</p> <p>15 all day last week so we're going to</p> <p>16 have a right to make our objections on</p> <p>17 the record and do it concisely.</p> <p>18 THE WITNESS: What is the</p> <p>19 question?</p> <p>20 BY MS. SUMNER:</p> <p>21 Q. The question is whether the</p> <p>22 statements that are expressed in your</p> <p>23 presentation that's been marked as Brown-3</p> <p>24 are indeed truthful and accurate?</p> <p>25 A. They were at the time.</p>	<p style="text-align: right;">49</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 bottom.</p> <p>3 A. Yes.</p> <p>4 Q. The first bullet point on that</p> <p>5 page reads, "Five of FMI's largest members</p> <p>6 ask FMI to develop a policy and program to</p> <p>7 address animal welfare." This is on a slide</p> <p>8 that is -- bears the legend December 2000.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Is that an accurate statement?</p> <p>12 A. Yes.</p> <p>13 Q. Who were those five members,</p> <p>14 Ms. Brown?</p> <p>15 A. Kroger, Albertsons, Safeway,</p> <p>16 Ahold, and I don't remember the fifth.</p> <p>17 Q. Was the fifth one Wal-Mart?</p> <p>18 A. It could have been. Wal-Mart</p> <p>19 was definitely involved in our program.</p> <p>20 Q. Why don't you turn back to what</p> <p>21 was marked as Brown-2, the article. I'll</p> <p>22 direct your attention to page 656. The first</p> <p>23 full paragraph on that page. The second</p> <p>24 sentence in that paragraph reads, "To this</p> <p>25 end, late in 2000, the Food Marketing</p>

13 (Pages 46 to 49)

<p style="text-align: right;">50</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Institute...was asked by five member</p> <p>3 companies (Ahold...; Albertsons...;</p> <p>4 Kroger...; Safeway...; and Wal-Mart</p> <p>5 Stores...) to develop a voluntary policy and</p> <p>6 programme to address animal welfare that the</p> <p>7 entire supermarket industry could embrace."</p> <p>8 Does that refresh your</p> <p>9 recollection as to whether Wal-Mart was the</p> <p>10 fifth?</p> <p>11 A. Yes.</p> <p>12 Q. And these were five of FMI's</p> <p>13 largest members?</p> <p>14 A. Yes.</p> <p>15 Q. Largest in terms of what?</p> <p>16 A. Volume.</p> <p>17 Q. Sales volume?</p> <p>18 A. Yes.</p> <p>19 Q. The bullet point says the</p> <p>20 members asked FMI to develop a policy. Did</p> <p>21 they come to you with that request?</p> <p>22 A. Yes.</p> <p>23 Q. What do you recall about that</p> <p>24 initial approach?</p> <p>25 A. Not much. It was more than ten</p>	<p style="text-align: right;">52</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Jonathan Mayes is with which</p> <p>3 company?</p> <p>4 A. Safeway.</p> <p>5 Q. Ms. Marmer?</p> <p>6 A. Kroger.</p> <p>7 Q. And is it Ms. Cousin?</p> <p>8 A. Ertharin Cousin, Albertsons.</p> <p>9 Q. What do you recall about that</p> <p>10 conversation?</p> <p>11 A. That they asked me if I would</p> <p>12 look into FMI developing a program on animal</p> <p>13 welfare that would include a program and a</p> <p>14 policy.</p> <p>15 Q. Did they tell you why they were</p> <p>16 interested in having FMI look into developing</p> <p>17 a policy and program about animal welfare at</p> <p>18 that time?</p> <p>19 A. They were very -- sorry.</p> <p>20 Sorry.</p> <p>21 They were very concerned about</p> <p>22 the public media attention and the manner in</p> <p>23 which it was being used against individual</p> <p>24 companies in the quick serve industry.</p> <p>25 Q. Were they concerned that it</p>
<p style="text-align: right;">51</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 years ago.</p> <p>3 Q. But what do you recall sitting</p> <p>4 here today?</p> <p>5 A. There was a meeting of members</p> <p>6 which is not uncommon, and I was at the</p> <p>7 meeting, and three of the companies'</p> <p>8 representatives asked me if I would look into</p> <p>9 developing a policy and a program to address</p> <p>10 animal welfare.</p> <p>11 Q. Who were those three?</p> <p>12 A. Kroger, Safeway and Albertsons.</p> <p>13 Q. Did they make that request to</p> <p>14 you privately or in the company of other FMI</p> <p>15 members?</p> <p>16 A. We were having lunch, the four</p> <p>17 of us.</p> <p>18 Q. Do you recall who the</p> <p>19 representatives were specifically from those</p> <p>20 three companies who you had lunch with, who</p> <p>21 were the individual people?</p> <p>22 A. Yes.</p> <p>23 Q. Who were they?</p> <p>24 A. Jonathan Mayes, Lynn Marmer,</p> <p>25 and Ertharin Cousin.</p>	<p style="text-align: right;">53</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 would be used against supermarkets like</p> <p>3 themselves?</p> <p>4 A. Yes.</p> <p>5 - - -</p> <p>6 (Exhibit Brown-4, FMI Meeting</p> <p>7 Notes November 29, 2000 PETA, Bates</p> <p>8 FMI-001209 & FMI-001210, was marked</p> <p>9 for identification.)</p> <p>10 - - -</p> <p>11 BY MS. SUMNER:</p> <p>12 Q. Ms. Brown, I'd like to show you</p> <p>13 a document that bears the Bates numbers</p> <p>14 FMI-001209 through 1210. It's been marked as</p> <p>15 Brown-4. It's entitled, "FMI Meeting Notes</p> <p>16 November 29, 2000 PETA."</p> <p>17 Do you recognize this document,</p> <p>18 Ms. Brown?</p> <p>19 A. Not specifically, but I</p> <p>20 produced a lot of documents at my time at FMI</p> <p>21 so I'm sure this is mine.</p> <p>22 Q. Does this appear to you to be</p> <p>23 meeting notes from a meeting among Kroger,</p> <p>24 Albertsons, Safeway, and FMI?</p> <p>25 A. Well, it doesn't say that</p>

14 (Pages 50 to 53)

<p style="text-align: right;">54</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Kroger was there, so...</p> <p>3 Oh, no, this is not my</p> <p>4 document. This is a document someone else</p> <p>5 wrote. Sorry.</p> <p>6 Q. Did you participate in the</p> <p>7 meeting that's referenced in these notes?</p> <p>8 A. Yes.</p> <p>9 Q. And is that the lunch meeting</p> <p>10 that you just described to me?</p> <p>11 A. Yes.</p> <p>12 Q. So this is the meeting among</p> <p>13 Kroger, Albertsons, Safeway and yourself?</p> <p>14 A. Yes.</p> <p>15 Q. And did that meeting take place</p> <p>16 on or about November 29, 2000?</p> <p>17 A. I don't recall the exact date,</p> <p>18 but I would assume that this is accurate.</p> <p>19 Q. Did you receive these meeting</p> <p>20 notes in the course of your employment at</p> <p>21 FMI?</p> <p>22 A. I don't recall that. I'm</p> <p>23 copied on it, but I don't recall receiving</p> <p>24 it. I must have.</p> <p>25 Q. Could you take a moment to</p>	<p style="text-align: right;">56</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 and then -- so that was a very common</p> <p>3 practice within the association,</p> <p>4 within all associations. It's one of</p> <p>5 the reasons why associations are so</p> <p>6 valuable to their individual members.</p> <p>7 Their members are spending their time</p> <p>8 running their businesses, and the</p> <p>9 association expertise in the areas of</p> <p>10 public affairs and issues management</p> <p>11 were very helpful, are very helpful in</p> <p>12 developing a position that all of the</p> <p>13 members can then use as opposed to</p> <p>14 having to go about that work</p> <p>15 themselves and take that time away</p> <p>16 from their business.</p> <p>17 BY MS. SUMNER:</p> <p>18 Q. So is it fair to say that these</p> <p>19 members were looking to FMI to develop a</p> <p>20 single industry approach to the animal</p> <p>21 welfare issues they were concerned about?</p> <p>22 MR. WILDERS: Objection.</p> <p>23 MR. RANDALL: Objection.</p> <p>24 Leading.</p> <p>25 BY MS. SUMNER:</p>
<p style="text-align: right;">55</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 review these notes, and my question is, are</p> <p>3 these notes an accurate description of what</p> <p>4 was discussed at this meeting?</p> <p>5 A. I don't recall the specifics of</p> <p>6 our conversation, but I think that this is a</p> <p>7 representation of a very good approach.</p> <p>8 Q. The first sentence reads, "Our</p> <p>9 hope is that no individual company will deal</p> <p>10 with PETA, but instead we will all work with</p> <p>11 FMI to develop an industry position that we</p> <p>12 can all adopt."</p> <p>13 Is that a topic that was</p> <p>14 discussed at this meeting?</p> <p>15 A. Yes.</p> <p>16 Q. What was your understanding as</p> <p>17 to why the retailers at this meeting did not</p> <p>18 want to deal with PETA themselves?</p> <p>19 MR. RANDALL: Objection. Vague.</p> <p>20 THE WITNESS: It was not</p> <p>21 uncommon for the members to use the</p> <p>22 trade association's expertise and help</p> <p>23 in developing a response to an issue</p> <p>24 that they all had to deal with. So</p> <p>25 you could have an industry position</p>	<p style="text-align: right;">57</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. You can go ahead and answer the</p> <p>3 question.</p> <p>4 A. Repeat the question.</p> <p>5 Q. I said so is it fair to say</p> <p>6 that these members were looking to FMI to</p> <p>7 develop a single industry approach to the</p> <p>8 animal welfare issues they were concerned</p> <p>9 about?</p> <p>10 MR. RANDALL: Same objection.</p> <p>11 THE WITNESS: They wanted FMI to</p> <p>12 work with them on developing an</p> <p>13 industry position.</p> <p>14 BY MS. SUMNER:</p> <p>15 Q. That they could all adopt?</p> <p>16 MR. WILDERS: Objection.</p> <p>17 THE WITNESS: That they could</p> <p>18 use as they needed.</p> <p>19 MR. WILDERS: Misstates the</p> <p>20 testimony.</p> <p>21 COURT REPORTER: That they could</p> <p>22 use --</p> <p>23 THE WITNESS: -- as they needed.</p> <p>24 BY MS. SUMNER:</p> <p>25 Q. Was there a benefit to these</p>

15 (Pages 54 to 57)

<p style="text-align: right;">58</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 members of having a single industry approach</p> <p>3 as opposed to varied individual company</p> <p>4 approaches?</p> <p>5 MR. RANDALL: Objection to form.</p> <p>6 MR. WILDERS: Vague and calls</p> <p>7 for speculation.</p> <p>8 THE WITNESS: Repeat the</p> <p>9 question.</p> <p>10 BY MS. SUMNER:</p> <p>11 Q. Did you have an understanding</p> <p>12 as to whether these members perceived a</p> <p>13 benefit to having a single industry approach</p> <p>14 as opposed -- a single industry approach to</p> <p>15 animal welfare as opposed to multiple</p> <p>16 approaches by individual companies?</p> <p>17 MR. RANDALL: Same objection.</p> <p>18 THE WITNESS: The whole industry</p> <p>19 benefits from that approach.</p> <p>20 Certainly suppliers and producers</p> <p>21 would benefit if there is a common</p> <p>22 industry position on an issue that</p> <p>23 affects them so directly, and,</p> <p>24 therefore, they do not have to deal</p> <p>25 with different requests, different</p>	<p style="text-align: right;">60</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 you turn to page 2, it says, "Once we have a</p> <p>3 shared information base..." I'm looking at</p> <p>4 number 5, it says, "Based on our meeting, FMI</p> <p>5 will do the following," and then point 5 is,</p> <p>6 "Once we have a shared information base, set</p> <p>7 up a conference call or meeting with the</p> <p>8 producer trade associations and their leading</p> <p>9 members."</p> <p>10 Was that discussed at the</p> <p>11 meeting?</p> <p>12 A. I don't recall that</p> <p>13 specifically.</p> <p>14 Q. Do you have an understanding as</p> <p>15 to why -- well, as to whether the produce --</p> <p>16 whether the FMI's members asked FMI to reach</p> <p>17 out to the producer trade associations?</p> <p>18 MR. WILDERS: Objection. Vague.</p> <p>19 THE WITNESS: Part of the policy</p> <p>20 was to collaborate with the producer</p> <p>21 industry. This was an issue which</p> <p>22 affected the producers directly. And</p> <p>23 if FMI was going to develop a position</p> <p>24 on the issue, we felt it important to</p> <p>25 let our producers know what we were</p>
<p style="text-align: right;">59</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 specifications on the same issue.</p> <p>3 BY MS. SUMNER:</p> <p>4 Q. Would it also benefit the</p> <p>5 individual retailers who were FMI's members</p> <p>6 to have a single industry approach?</p> <p>7 MR. RANDALL: Objection to form.</p> <p>8 MR. WILDERS: Calls for</p> <p>9 speculation.</p> <p>10 THE WITNESS: They could have a</p> <p>11 common position on the issue, yes.</p> <p>12 BY MS. SUMNER:</p> <p>13 Q. And what would the benefit of a</p> <p>14 common position to them be?</p> <p>15 MR. WILDERS: Calls for</p> <p>16 speculation.</p> <p>17 THE WITNESS: It would be</p> <p>18 something that they could point to</p> <p>19 from the standpoint of their customers</p> <p>20 and anyone else who was asking them</p> <p>21 questions about where they are on the</p> <p>22 issue of animal welfare.</p> <p>23 BY MS. SUMNER:</p> <p>24 Q. Was there a -- strike that.</p> <p>25 Further down in the notes, if</p>	<p style="text-align: right;">61</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 developing. So there was a meeting</p> <p>3 that was held. It was hosted by the</p> <p>4 American Meat Institute. And all of</p> <p>5 the producer organizations were</p> <p>6 invited to attend. And at the</p> <p>7 meeting, we told them that we would be</p> <p>8 developing a position, a board</p> <p>9 position, that we would be developing</p> <p>10 a group of animal welfare experts, and</p> <p>11 that we would be collaborating with</p> <p>12 them on an approach to the issue of</p> <p>13 animal welfare.</p> <p>14 BY MS. SUMNER:</p> <p>15 Q. When was that meeting held?</p> <p>16 A. I don't recall specifically.</p> <p>17 Q. And was that something that</p> <p>18 your members asked you to do?</p> <p>19 MR. WILDERS: Objection. Vague.</p> <p>20 THE WITNESS: I don't recall</p> <p>21 specifically whether it was something</p> <p>22 they asked us to do or it was</p> <p>23 something that we said we thought</p> <p>24 would be a good idea to let the</p> <p>25 producer organizations know in a</p>

16 (Pages 58 to 61)

<p style="text-align: right;">62</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 meeting as opposed to individual</p> <p>3 one-on-one meetings.</p> <p>4 BY MS. SUMNER:</p> <p>5 Q. Before you held that meeting,</p> <p>6 would you have gotten the consent of your</p> <p>7 members to do that?</p> <p>8 A. There is very little that a</p> <p>9 trade association executive does on their own</p> <p>10 without the consent and knowledge of their</p> <p>11 members, particularly with an issue that was</p> <p>12 so highly controversial at the time.</p> <p>13 Q. So in this particular instance,</p> <p>14 you would have had the consent and knowledge</p> <p>15 of the members before you went and held that</p> <p>16 meeting?</p> <p>17 MR. RANDALL: Objection.</p> <p>18 Leading.</p> <p>19 MR. WILDERS: Leading and</p> <p>20 assumes facts not in evidence, and</p> <p>21 misstates the testimony.</p> <p>22 BY MS. SUMNER:</p> <p>23 Q. Let me rephrase the question.</p> <p>24 In this particular instance,</p> <p>25 did you have the consent and knowledge of</p>	<p style="text-align: right;">64</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. WILDERS: Objection. Vague.</p> <p>3 THE WITNESS: We had a policy</p> <p>4 and a program outline that we were</p> <p>5 following. And our members certainly</p> <p>6 knew about that. Did we call them up</p> <p>7 and ask them if it was okay that we</p> <p>8 have a specific meeting on a specific</p> <p>9 day? I doubt that. I don't recall.</p> <p>10 BY MS. SUMNER:</p> <p>11 Q. Was the concept of coordinating</p> <p>12 with producer organizations part of that</p> <p>13 policy and program that you just referred to?</p> <p>14 A. Yes. Yes.</p> <p>15 Q. And was that policy and program</p> <p>16 approved by FMI's Board of Directors?</p> <p>17 A. Yes.</p> <p>18 Q. And who makes up FMI's Board of</p> <p>19 Directors?</p> <p>20 A. It's representative of all of</p> <p>21 the aspects of our membership.</p> <p>22 Q. So it's FMI members --</p> <p>23 A. FMI members.</p> <p>24 Q. -- who sit on the board?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">63</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 your members before the meeting was held?</p> <p>3 A. I'm not sure I understand the</p> <p>4 question. And I'll tell you why I don't</p> <p>5 understand it. I feel as if that question</p> <p>6 has a hidden agenda in it, and I sure would</p> <p>7 like to know what it is.</p> <p>8 Q. I'm just picking up on -- you</p> <p>9 said to me, your answer, I'm just trying to</p> <p>10 understand your answer. You said -- I asked</p> <p>11 you a question, was -- was that something</p> <p>12 that your members asked you to do. Your</p> <p>13 answer was, it was something that we said we</p> <p>14 thought would be a good idea to let the</p> <p>15 producer organizations know in a meeting as</p> <p>16 opposed to individual one-on-one meetings.</p> <p>17 And I asked whether you would have gotten the</p> <p>18 consent of your members before you did that.</p> <p>19 Your answer was there's very little that a</p> <p>20 trade association executive does without the</p> <p>21 consent and knowledge of your members.</p> <p>22 My question is in this</p> <p>23 particular instance, did you have the consent</p> <p>24 and knowledge of the members before that</p> <p>25 meeting was held?</p>	<p style="text-align: right;">65</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Let's go back to the five</p> <p>3 members who approached you, approached FMI to</p> <p>4 develop an animal welfare program. Did FMI's</p> <p>5 other members, aside from those five, support</p> <p>6 that animal welfare effort that was initiated</p> <p>7 by those five members?</p> <p>8 A. Yes.</p> <p>9 MR. WILDERS: Objection. Vague.</p> <p>10 Compound. I object to you using the</p> <p>11 term "members."</p> <p>12 MS. SUMNER: Your objections are</p> <p>13 noted. You can object to the form of</p> <p>14 the question and let's move on.</p> <p>15 MR. WILDERS: There are 1,500</p> <p>16 members. You're asking her every</p> <p>17 single one --</p> <p>18 MS. SUMNER: Please refrain from</p> <p>19 the speaking objection.</p> <p>20 MR. MCKENNEY: Objection to the</p> <p>21 sidebar.</p> <p>22 MS. SUMNER: We understand your</p> <p>23 objections. I'm not going to change</p> <p>24 my terminology. It's duly noted for</p> <p>25 the record, save it for trial.</p>

17 (Pages 62 to 65)

<p style="text-align: right;">66</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. WILDERS: You're trying to</p> <p>3 trick this witness.</p> <p>4 THE WITNESS: Let me clarify</p> <p>5 something. FMI used several means of</p> <p>6 informing its large member base of</p> <p>7 what it was doing. And that was done</p> <p>8 through our weekly mailings. So</p> <p>9 anything that we would have been doing</p> <p>10 in the area of a board policy, in the</p> <p>11 area of program development,</p> <p>12 educational programs, research</p> <p>13 programs, issues management, all of</p> <p>14 that was shared with our members on a</p> <p>15 weekly basis through a weekly mailing.</p> <p>16 It was also made a part of our Web</p> <p>17 site, and in certain circumstances</p> <p>18 there were members only sections</p> <p>19 primarily because there was government</p> <p>20 relations information, et cetera, that</p> <p>21 each association likes to keep to</p> <p>22 themselves from the standpoint of</p> <p>23 strategy. But our members were fully</p> <p>24 informed all the time. Did they read</p> <p>25 every single word that we sent them,</p>	<p style="text-align: right;">68</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. A common approach.</p> <p>3 Q. A common approach among whom?</p> <p>4 A. The supermarket industry, but</p> <p>5 in collaboration with our producer partners.</p> <p>6 Q. And why was it important for</p> <p>7 FMI's members to have an industry approach?</p> <p>8 MR. GREEN: Asked and answered.</p> <p>9 THE WITNESS: I have already</p> <p>10 answered that question.</p> <p>11 BY MS. SUMNER:</p> <p>12 Q. I'm not sure that I have had</p> <p>13 that exact question, so I'd appreciate it if</p> <p>14 you'd answer it again. Why was it important</p> <p>15 for FMI's members to have an industry</p> <p>16 approach?</p> <p>17 MR. WILDERS: Assumes facts not</p> <p>18 in evidence.</p> <p>19 THE WITNESS: The association's</p> <p>20 purpose was to help the -- one of the</p> <p>21 association's purposes was to help the</p> <p>22 industry develop an industry approach</p> <p>23 to a numerous -- numerous issues,</p> <p>24 government relations issues,</p> <p>25 communications issues, specific issues</p>
<p style="text-align: right;">67</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 probably not. But we definitely</p> <p>3 informed our members on a regular</p> <p>4 basis through a communication system</p> <p>5 that we had developed that reached all</p> <p>6 1,500 of them.</p> <p>7 BY MS. SUMNER:</p> <p>8 Q. That's helpful. Thank you for</p> <p>9 that clarification.</p> <p>10 I'd like to direct your</p> <p>11 attention back to your presentation which was</p> <p>12 marked as Brown-3. Specifically I'd like to</p> <p>13 direct your attention to the page with the</p> <p>14 Bates number 3056. Bears the heading</p> <p>15 "PURPOSE" at the top.</p> <p>16 A. Uh-huh.</p> <p>17 Q. First bullet there reads, "Take</p> <p>18 a page from the experience of the quick serve</p> <p>19 chain restaurants - get in front of the issue</p> <p>20 to develop an industry approach."</p> <p>21 What did you mean when you</p> <p>22 wrote that bullet point?</p> <p>23 A. Exactly what it says.</p> <p>24 Q. What did FMI mean by -- or what</p> <p>25 did you mean by an industry approach?</p>	<p style="text-align: right;">69</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 of labeling, food safety, animal</p> <p>3 welfare, GMOs. It was part of our --</p> <p>4 part of our day-to-day mission.</p> <p>5 BY MS. SUMNER:</p> <p>6 Q. I understand that the trade</p> <p>7 association's mission was to develop industry</p> <p>8 positions on various things. And that's not</p> <p>9 my question. My question really is, with</p> <p>10 respect to this particular issue, did you</p> <p>11 have an understanding as to why FMI's members</p> <p>12 wanted an industry approach on this issue,</p> <p>13 the animal welfare issue?</p> <p>14 MR. WILDERS: Assumes facts not</p> <p>15 in evidence. Misstates the testimony</p> <p>16 and the document.</p> <p>17 THE WITNESS: FMI wanted to</p> <p>18 develop an industry approach for its</p> <p>19 members because we had the expertise,</p> <p>20 the resources and the time to be able</p> <p>21 to do that. And our individual</p> <p>22 members, rightfully so, were more</p> <p>23 focused on maintaining successful</p> <p>24 businesses.</p> <p>25 BY MS. SUMNER:</p>

18 (Pages 66 to 69)

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<p style="text-align: right;">70</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Maybe I just need to ask the</p> <p>3 question a little bit differently. I'm not</p> <p>4 asking why they turned to FMI to do it or why</p> <p>5 they didn't want to do it themselves. What</p> <p>6 I'm asking is, did you have an understanding</p> <p>7 as to why the members wanted one industry</p> <p>8 approach to this issue?</p> <p>9 MR. RANDALL: Objection.</p> <p>10 MR. WILDERS: Objection. Asked</p> <p>11 and answered. Argumentative.</p> <p>12 Misstates the document and the</p> <p>13 testimony, and assumes facts not in</p> <p>14 evidence.</p> <p>15 MR. RANDALL: Objection to form.</p> <p>16 THE WITNESS: Excuse me, but</p> <p>17 pardon what I'm going to say. It's</p> <p>18 very irritating to be constantly asked</p> <p>19 the same question over and over and</p> <p>20 over again.</p> <p>21 BY MS. SUMNER:</p> <p>22 Q. And I apologize for that, but I</p> <p>23 need an answer to the specific question. I'm</p> <p>24 not asking you -- I'm trying to clarify the</p> <p>25 question in case we're having a</p>	<p style="text-align: right;">72</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. SUMNER:</p> <p>3 Q. What is your understanding?</p> <p>4 MR. RANDALL: Objection to form.</p> <p>5 MR. WILDERS: Asked and</p> <p>6 answered. Assumes facts.</p> <p>7 THE WITNESS: They outlined what</p> <p>8 is in this document that you've handed</p> <p>9 to me.</p> <p>10 BY MS. SUMNER:</p> <p>11 Q. And what was that?</p> <p>12 A. You want me to read it to you?</p> <p>13 Q. If there's something in that</p> <p>14 specific document that you think answers that</p> <p>15 question, it would be helpful for you to</p> <p>16 point that out.</p> <p>17 A. You're asking -- no. You're</p> <p>18 asking me to recall specific data that's more</p> <p>19 than ten years ago. And I have been away</p> <p>20 from the industry for five.</p> <p>21 Q. Ms. Brown, I'm just asking you</p> <p>22 if you have an understanding sitting here</p> <p>23 today as to why they wanted a single industry</p> <p>24 approach?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">71</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 miscommunication.</p> <p>3 A. I don't understand what your</p> <p>4 question is. I don't understand what --</p> <p>5 Q. Let me try to ask it again.</p> <p>6 A. I don't understand why this</p> <p>7 question is any different from any other</p> <p>8 question in which you asked me about an</p> <p>9 industry approach. And I do not understand</p> <p>10 why any of my previous answers cannot be</p> <p>11 applied to this question.</p> <p>12 Q. Because I'm not asking you why</p> <p>13 they wanted FMI to develop the approach. I</p> <p>14 have asked you that question and you've</p> <p>15 covered that, why they turned to FMI as</p> <p>16 opposed to doing it themselves. My question</p> <p>17 is one step before that.</p> <p>18 A. One step before that.</p> <p>19 Q. And it's, did you have an</p> <p>20 understanding as to why your members wanted a</p> <p>21 single industry approach on this particular</p> <p>22 issue?</p> <p>23 A. Yes.</p> <p>24 MR. WILDERS: Asked and</p> <p>25 answered.</p>	<p style="text-align: right;">73</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And what is that understanding?</p> <p>3 MR. WILDERS: Asked and</p> <p>4 answered.</p> <p>5 MR. RANDALL: Objection to form.</p> <p>6 MR. WILDERS: Assumes facts not</p> <p>7 in evidence. And argumentative.</p> <p>8 THE WITNESS: That they could</p> <p>9 avoid having any company singled out</p> <p>10 specifically by activist groups,</p> <p>11 individual companies don't have to</p> <p>12 duplicate efforts. And that would</p> <p>13 also apply to the producer community.</p> <p>14 And individual companies are not</p> <p>15 leveraged by the actions of one.</p> <p>16 BY MS. SUMNER:</p> <p>17 Q. What do you mean by that, that</p> <p>18 individual companies are not leveraged by the</p> <p>19 actions of one?</p> <p>20 A. Company A did, if PETA comes</p> <p>21 to -- which they did with the quick serve</p> <p>22 industry, company A did X, you know, what are</p> <p>23 you going to do about it, are you going to do</p> <p>24 better, are you going to do less. Trying to</p> <p>25 up the game. That is a common tactic on the</p>

19 (Pages 70 to 73)

<p style="text-align: right;">74</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 part of activist organizations. That is what</p> <p>3 they were trying -- that was one of the</p> <p>4 things they were trying to avoid.</p> <p>5 Instead, FMI dealt with the</p> <p>6 activist organizations, and FMI on behalf of</p> <p>7 its members, described what our position was,</p> <p>8 what our policy was, and the efforts that we</p> <p>9 had under way to increase the humane handling</p> <p>10 for farm animals.</p> <p>11 Q. At the time you had that</p> <p>12 meeting in late November of 2000 with</p> <p>13 Safeway, Albertsons and Kroger, prior to that</p> <p>14 meeting, had FMI been approached by any</p> <p>15 producer organization regarding its animal</p> <p>16 welfare program?</p> <p>17 A. I don't recall.</p> <p>18 - - -</p> <p>19 (Exhibit Brown-5, E-mail chain,</p> <p>20 Bates FMI-001078 & FMI-001079, was</p> <p>21 marked for identification.)</p> <p>22 - - -</p> <p>23 BY MS. SUMNER:</p> <p>24 Q. Ms. Brown, I'm going to show</p> <p>25 you a document that's been marked as Brown-5.</p>	<p style="text-align: right;">76</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 from Ms. Marmer on or about March 20, 2002?</p> <p>3 A. No.</p> <p>4 Q. And did you respond to</p> <p>5 Ms. Marmer as indicated in the second e-mail</p> <p>6 in the chain?</p> <p>7 A. That's what it says.</p> <p>8 Q. Did you have this conversation</p> <p>9 with Ms. Marmer in your role as senior vice</p> <p>10 president for FMI?</p> <p>11 A. Any conversation I would have</p> <p>12 had with Lynn using FMI's e-mail system would</p> <p>13 have been in my role as a senior vice</p> <p>14 president with FMI.</p> <p>15 Q. Does this appear to be an</p> <p>16 accurate copy of the e-mail conversation you</p> <p>17 had with Ms. Marmer?</p> <p>18 A. I wouldn't have something to</p> <p>19 compare it to, so I'm assuming it's accurate.</p> <p>20 Q. Do you have any reason to</p> <p>21 believe it's not an accurate copy?</p> <p>22 A. No.</p> <p>23 Q. Just to under -- so you</p> <p>24 understand this, Ms. Brown, and it will make</p> <p>25 it go faster, for purposes of trial, we need</p>
<p style="text-align: right;">75</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 It's an e-mail chain bearing the Bates number</p> <p>3 FMI-001078 to 79. My question to you is</p> <p>4 whether you recognize this document?</p> <p>5 A. I don't recall the document</p> <p>6 specifically. I mean, I recognize it, it has</p> <p>7 my name on it, but I don't recall the</p> <p>8 correspondence.</p> <p>9 Q. Is this an e-mail chain between</p> <p>10 you and Lynn Marmer?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Is Ms. Marmer one of the</p> <p>13 individuals who attended the meeting in late</p> <p>14 2000?</p> <p>15 A. Yes, I already answered that.</p> <p>16 Q. And she's from Kroger?</p> <p>17 A. Yes, I already answered that.</p> <p>18 Q. Did you receive the first</p> <p>19 e-mail in the chain from Ms. Marmer on or</p> <p>20 about March 20, 2002?</p> <p>21 A. I have no idea. It is -- I</p> <p>22 don't know. I mean, there's a date on here,</p> <p>23 so I'm assuming the date is correct.</p> <p>24 Q. Do you have any reason to</p> <p>25 believe that you did not receive that e-mail</p>	<p style="text-align: right;">77</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 to lay a foundation for each document. The</p> <p>3 questions I just asked you are necessary to</p> <p>4 lay that foundation. So for every document</p> <p>5 we go through today I'm going to have to ask</p> <p>6 you the same questions and you're just going</p> <p>7 to have to bear with me through the process,</p> <p>8 it's something we have to do to do what's</p> <p>9 called authenticate this document.</p> <p>10 A. Maybe you can have a poster</p> <p>11 that says question A, question B, question C,</p> <p>12 question D, you could just point to it and I</p> <p>13 could point to the answer on the other side.</p> <p>14 Q. Well, unfortunately we can't do</p> <p>15 it that way, because this will be played to a</p> <p>16 jury someday.</p> <p>17 A. I hope I'm somewhere else in</p> <p>18 the world.</p> <p>19 Q. In this e-mail to you, the</p> <p>20 bottom one, Ms. Marmer wrote that there are</p> <p>21 two purposes for having an industry-wide</p> <p>22 group develop an animal welfare policy. Do</p> <p>23 you see that? About halfway down her e-mail</p> <p>24 she says, Karen, I explained that there are</p> <p>25 two purposes to having an industry-wide</p>

20 (Pages 74 to 77)

<p style="text-align: right;">78</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 group.</p> <p>3 Do you see that? I'm in the</p> <p>4 middle of her e-mail.</p> <p>5 MR. GREEN: Read the whole</p> <p>6 document.</p> <p>7 THE WITNESS: Okay. Okay.</p> <p>8 Okay. Okay. Which is the paragraph</p> <p>9 you're focusing on now?</p> <p>10 BY MS. SUMNER:</p> <p>11 Q. About halfway down her e-mail</p> <p>12 she writes, I explained that there are two</p> <p>13 purposes for having an industry-wide group.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. One of the purposes she says</p> <p>17 is, "...to not allow advocacy groups to pit</p> <p>18 one retailer against another..."</p> <p>19 Do you see that?</p> <p>20 A. Okay.</p> <p>21 Q. Is that -- did you understand</p> <p>22 that to be the concept that you just</p> <p>23 explained to me about the concern about the</p> <p>24 animal activists leveraging one company</p> <p>25 against another I think are the words you</p>	<p style="text-align: right;">80</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 behalf, then it nullifies to some</p> <p>3 extent those kinds of shenanigans that</p> <p>4 go on among the activist</p> <p>5 organizations.</p> <p>6 BY MS. SUMNER:</p> <p>7 Q. The second purpose she lists</p> <p>8 there is to move the industry standards so</p> <p>9 that if there are costs, they are shared</p> <p>10 across the industry. Do you see that?</p> <p>11 A. I see that.</p> <p>12 Q. What did you understand her to</p> <p>13 mean when she wrote that one of the purposes</p> <p>14 of having an industry-wide group was to move</p> <p>15 the industry standards so that if there are</p> <p>16 costs, they are shared across the industry?</p> <p>17 A. I probably didn't understand</p> <p>18 what she was talking about.</p> <p>19 Q. Sitting here today, do you have</p> <p>20 an understanding of what she meant?</p> <p>21 A. No. I mean, I know in general</p> <p>22 what she may be trying to imply, but</p> <p>23 specifically I don't know.</p> <p>24 Q. And what is it in general that</p> <p>25 you know that she may be trying to imply?</p>
<p style="text-align: right;">79</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 used?</p> <p>3 A. I suppose you could use all of</p> <p>4 those terms.</p> <p>5 Q. Did you have a different</p> <p>6 understanding as to what she meant here by</p> <p>7 not allowing advocacy groups to pit one</p> <p>8 retailer against another?</p> <p>9 A. No.</p> <p>10 MR. RANDALL: Objection.</p> <p>11 Speculation.</p> <p>12 THE WITNESS: One of the things</p> <p>13 that was happening with PETA is they</p> <p>14 would write to company A and say</p> <p>15 company B is doing blah, blah, blah,</p> <p>16 blah. And company B had no clue their</p> <p>17 name was being used by PETA, because</p> <p>18 PETA does not have been to responsible</p> <p>19 for its accuracy or honesty. So then</p> <p>20 that was the kind of shenanigan that</p> <p>21 was going on. That's part of it. So</p> <p>22 if a company can say, when they get</p> <p>23 these kinds of letters, we're working</p> <p>24 with the Food Marketing Institute on</p> <p>25 this issue, please contact them on our</p>	<p style="text-align: right;">81</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. RANDALL: Objection.</p> <p>3 Speculation.</p> <p>4 MR. WILDERS: Misstates the</p> <p>5 testimony.</p> <p>6 THE WITNESS: I don't know. I</p> <p>7 can't speculate. I'm here to speak</p> <p>8 truthfully and honestly and</p> <p>9 accurately, and I would prefer not to</p> <p>10 speculate on something that is</p> <p>11 contained in an e-mail message that</p> <p>12 occurred 12 years ago.</p> <p>13 BY MS. SUMNER:</p> <p>14 Q. So your testimony sitting here</p> <p>15 today is that you don't know what Ms. Marmer</p> <p>16 meant when she said --</p> <p>17 A. Specifically, no, I don't.</p> <p>18 Q. If you could turn to the end of</p> <p>19 her e-mail which is on the second page of</p> <p>20 this document. She wrote to you, "If the</p> <p>21 animal welfare group does its work right, it</p> <p>22 is reasonable to assume that most of the</p> <p>23 major purchasers of eggs (whether retailers</p> <p>24 or fast food) will support the FMI work group</p> <p>25 guidelines and the egg industry will have to</p>

21 (Pages 78 to 81)

<p style="text-align: right;">82</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 get on board, or be left behind by the major</p> <p>3 players."</p> <p>4 Do you see that?</p> <p>5 A. I see it.</p> <p>6 Q. What did you understand her to</p> <p>7 mean?</p> <p>8 A. That maybe that was an unwise</p> <p>9 train of thought on her part. I can't</p> <p>10 imagine --</p> <p>11 Q. What do you mean by that?</p> <p>12 A. In other words, I don't know</p> <p>13 what she was talking about. She is</p> <p>14 basically -- I could only speculate what</p> <p>15 she's talking about. One of the things that</p> <p>16 FMI did not get into discussion with our</p> <p>17 members on, no matter what our members wrote</p> <p>18 in e-mails, were costs or their relationship</p> <p>19 with their suppliers.</p> <p>20 Q. So you don't have an</p> <p>21 understanding as to what she meant?</p> <p>22 A. No.</p> <p>23 MR. WILDERS: Objection.</p> <p>24 Misstates the testimony.</p> <p>25 - - -</p>	<p style="text-align: right;">84</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 believe that you did not receive it?</p> <p>3 A. I have no reason to believe</p> <p>4 that I did not receive it.</p> <p>5 Q. What was Mr. Hilton asking you</p> <p>6 to do?</p> <p>7 A. I don't know. I would have to</p> <p>8 read this to find out what Mr. Hilton was</p> <p>9 asking me to do.</p> <p>10 Q. Could you take a moment to</p> <p>11 review the fax, please?</p> <p>12 A. Yes. [Reviewing document.]</p> <p>13 Okay.</p> <p>14 Q. When you received this</p> <p>15 document, what did you understand Mr. Hilton</p> <p>16 to be asking you to do?</p> <p>17 A. What he says in the document.</p> <p>18 Q. Which is what?</p> <p>19 A. He is giving me some ideas</p> <p>20 about what he thinks I might, emphasize</p> <p>21 might, share with Sean Gifford of PETA.</p> <p>22 Q. Had Albertsons received a</p> <p>23 letter from PETA?</p> <p>24 A. There is one attached.</p> <p>25 Q. Was he asking you to respond to</p>
<p style="text-align: right;">83</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 (Exhibit Brown-6, 8/31/01 Fax</p> <p>3 memo, Bates FMI-001205 - FMI-001208,</p> <p>4 was marked for identification.)</p> <p>5 - - -</p> <p>6 BY MS. SUMNER:</p> <p>7 Q. I'm going to show you a</p> <p>8 document that's been marked as Brown</p> <p>9 Exhibit 6.</p> <p>10 A. My God, I got an awful lot of</p> <p>11 stuff, didn't I?</p> <p>12 Q. This is a document bearing the</p> <p>13 Bates numbers FMI-001205 through 1208. And</p> <p>14 my first question, Ms. Brown, is whether you</p> <p>15 recognize this document?</p> <p>16 A. No, but I'm sure I must have</p> <p>17 received it.</p> <p>18 Q. Is this a fax memo from Steve</p> <p>19 Hilton at Albertsons addressed to you?</p> <p>20 A. That's what it says.</p> <p>21 Q. Did you receive this fax from</p> <p>22 Mr. Hilton on or about August 31, 2001, in</p> <p>23 your role as senior vice president at FMI?</p> <p>24 A. That is the date on the memo.</p> <p>25 Q. Do you have any reason to</p>	<p style="text-align: right;">85</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 PETA on Albertsons' behalf?</p> <p>3 A. That was part of our role, but</p> <p>4 we did not necessarily respond to PETA on</p> <p>5 behalf of individual companies. What we did</p> <p>6 was we talked with PETA about what the</p> <p>7 industry was doing, which was a policy and a</p> <p>8 program that our members supported. We did</p> <p>9 not get into conversations with PETA about</p> <p>10 individual actions that individual companies</p> <p>11 were taking, might take, thought about</p> <p>12 taking, did take.</p> <p>13 Q. If you look at the --</p> <p>14 A. Even if we were asked as is one</p> <p>15 of the suggestions in this letter.</p> <p>16 Q. So here if you just look at the</p> <p>17 first paragraph --</p> <p>18 A. I've seen that.</p> <p>19 Q. -- in this letter, he says, "So</p> <p>20 we would like you to call Sean Gifford PETA</p> <p>21 Campaign Coordinator and respond to him on</p> <p>22 our behalf."</p> <p>23 A. Right.</p> <p>24 Q. So did you understand him to be</p> <p>25 asking you to call PETA --</p>

22 (Pages 82 to 85)

<p style="text-align: right;">86</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Right, yes.</p> <p>3 Q. -- and respond to PETA on</p> <p>4 Albertsons' behalf?</p> <p>5 A. Yes.</p> <p>6 Q. And then he further on down in</p> <p>7 the third bullet point there, he writes to</p> <p>8 you, "We will continue to ask FMI to</p> <p>9 represent us on this important matter."</p> <p>10 A. Right.</p> <p>11 Q. Do you see that?</p> <p>12 A. Uh-huh.</p> <p>13 Q. What was he referring to, or</p> <p>14 what did you understand him to be --</p> <p>15 A. He was referring to the general</p> <p>16 issue of animal welfare.</p> <p>17 Q. You understood him to be asking</p> <p>18 you to represent Albertsons on the animal</p> <p>19 welfare issue?</p> <p>20 A. As part of the industry. Not</p> <p>21 as an individual company. In other words, we</p> <p>22 were representing the industry. We were</p> <p>23 not -- and our members as a part of that --</p> <p>24 as a part of our membership collectively, we</p> <p>25 were representing our members.</p>	<p style="text-align: right;">88</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. We were probably in the -- no,</p> <p>3 I don't -- I think we were in the process of</p> <p>4 beginning to form a member committee because</p> <p>5 the member committee had more representation</p> <p>6 than just the original companies that raised</p> <p>7 the issue with FMI.</p> <p>8 Q. Who was on that member</p> <p>9 committee?</p> <p>10 A. I don't recall.</p> <p>11 Q. Why was the member committee</p> <p>12 formed?</p> <p>13 A. Any issue that FMI was involved</p> <p>14 in which affected our members, we had a</p> <p>15 member committee as advice of counsel and to</p> <p>16 give us direction and guidance.</p> <p>17 Q. So the role of the member</p> <p>18 committee was to give FMI direction and</p> <p>19 guidance on animal welfare issues?</p> <p>20 A. React to or advise us on</p> <p>21 whether we -- what we were developing was</p> <p>22 going in the right direction.</p> <p>23 Q. Did you have a role vis-à-vis</p> <p>24 the member committee?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">87</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did other FMI members look to</p> <p>3 FMI to represent them on matters related to</p> <p>4 animal welfare?</p> <p>5 A. Yes.</p> <p>6 Q. I'd like you to look back to</p> <p>7 Brown-3. This is your presentation again.</p> <p>8 If you just want to keep that out, we're</p> <p>9 going to use that throughout the course of</p> <p>10 the deposition kind of to walk us through the</p> <p>11 time sequence.</p> <p>12 A. Okay.</p> <p>13 Q. If you look at the page that</p> <p>14 ends with the Bates number 3055. Again, this</p> <p>15 is the December 2000 slide. It notes, "FMI</p> <p>16 forms a member committee."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Did FMI form a member committee</p> <p>20 related to animal welfare?</p> <p>21 A. Yes.</p> <p>22 Q. And when was that committee</p> <p>23 formed?</p> <p>24 A. I don't recall.</p> <p>25 Q. Was it formed by December 2000?</p>	<p style="text-align: right;">89</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. What was that role?</p> <p>3 A. I managed the committee.</p> <p>4 Q. Did the committee hold</p> <p>5 meetings?</p> <p>6 A. They held one or two meetings,</p> <p>7 but the rest of their involvement was by</p> <p>8 memos and phone calls, conference calls.</p> <p>9 Q. Were minutes of the meetings</p> <p>10 and conference calls kept?</p> <p>11 A. Minutes of meetings would have</p> <p>12 been kept. They may have been -- the result</p> <p>13 of them may have been not minutes, per se,</p> <p>14 but actions coming out of it that needed to</p> <p>15 be taken. Conference calls, notes were</p> <p>16 probably made, but I have no idea --</p> <p>17 Q. Did you keep --</p> <p>18 A. -- specifically.</p> <p>19 Q. Did you keep those minutes and</p> <p>20 notes in your role as senior vice president</p> <p>21 of FMI?</p> <p>22 A. I had files, voluminous files,</p> <p>23 yes.</p> <p>24 Q. Did you keep, though, like a</p> <p>25 set of official minutes of these meetings?</p>

23 (Pages 86 to 89)

<p style="text-align: right;">90</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. No, not that I recall.</p> <p>3 Q. Was a list of member committee</p> <p>4 members maintained by FMI?</p> <p>5 A. Yes.</p> <p>6 Q. And who maintained that list of</p> <p>7 committee members?</p> <p>8 A. There were changes in the</p> <p>9 committee. There were companies that got</p> <p>10 involved later on in the process. There were</p> <p>11 changes of staff within the member companies.</p> <p>12 The list would have been kept within my</p> <p>13 office.</p> <p>14 Q. Do you recall what those lists</p> <p>15 looked like or what form they were in?</p> <p>16 A. No.</p> <p>17 Q. If I wanted to understand over</p> <p>18 time who sat on this member committee at any</p> <p>19 given point in time, would those lists be the</p> <p>20 best thing to look to?</p> <p>21 A. If they exist, yes.</p> <p>22 Q. Do you know if they exist?</p> <p>23 A. I don't know anything that has</p> <p>24 happened at FMI after January 30, 2009.</p> <p>25 Q. You did create them at some</p>	<p style="text-align: right;">92</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Was United Egg Producers one of</p> <p>3 the producer organizations with whom FMI</p> <p>4 met --</p> <p>5 A. Yes.</p> <p>6 Q. -- in this effort?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall who -- did you</p> <p>9 attend those meetings with United Egg</p> <p>10 Producers?</p> <p>11 A. Yes.</p> <p>12 Q. And who did you meet with at</p> <p>13 United Egg Producers?</p> <p>14 A. Al Pope. Gene what's his face,</p> <p>15 I can't remember his last name.</p> <p>16 Q. Gregory?</p> <p>17 A. Gregory. Ken Klippen. There</p> <p>18 may have been other people, but I don't</p> <p>19 recall.</p> <p>20 Q. Were individual egg producers</p> <p>21 included in those meetings?</p> <p>22 A. Sometimes.</p> <p>23 Q. Do you recall any specific egg</p> <p>24 producers?</p> <p>25 A. No.</p>
<p style="text-align: right;">91</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 point in time?</p> <p>3 A. Yeah, we had -- yes, we had a</p> <p>4 list of people that we corresponded with</p> <p>5 regularly on this issue.</p> <p>6 Q. The next bullet point on this</p> <p>7 December 2000 slide says, "FMI begins</p> <p>8 meetings with producer community."</p> <p>9 A. Correct.</p> <p>10 Q. Did that -- those meetings</p> <p>11 begin in or around December of 2000?</p> <p>12 A. Probably not because -- I don't</p> <p>13 recall specifically.</p> <p>14 Q. What was the purpose of these</p> <p>15 meetings?</p> <p>16 A. To -- the first initial meeting</p> <p>17 was to let the producer community know what</p> <p>18 our approach was going to be. And there were</p> <p>19 individual meetings with producer</p> <p>20 organizations to talk with them specifically</p> <p>21 about recommendations that were being made by</p> <p>22 our expert panel. And the expert panel</p> <p>23 consisted of veterinarians, animal scientists</p> <p>24 and an animal welfare advocate who was not</p> <p>25 part of any of the activist organizations.</p>	<p style="text-align: right;">93</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. When was the first meeting with</p> <p>3 United Egg Producers?</p> <p>4 A. I don't recall.</p> <p>5 Q. Was that a meeting that FMI</p> <p>6 requested?</p> <p>7 A. I'm not sure about that either.</p> <p>8 Once when we had the general meeting with all</p> <p>9 of the producer organizations, it was hosted</p> <p>10 by AMI, some of the producer organizations</p> <p>11 had been working on the animal welfare issue</p> <p>12 for some time, the egg producers was one.</p> <p>13 They were way ahead of this issue than many</p> <p>14 of the producer organizations. The other one</p> <p>15 was the American Meat Institute which had</p> <p>16 worked with Temple Grandin on slaughter</p> <p>17 guidelines. It is possible, but I don't</p> <p>18 know, so I don't want to speculate, that UEP</p> <p>19 approached us before -- when they -- after</p> <p>20 that initial meeting that we had with the</p> <p>21 larger group, but I don't recall that.</p> <p>22 Q. Turn to page 3057 in Exhibit 3,</p> <p>23 Brown-3. This is slide entitled "January 2001."</p> <p>24 A. Uh-huh.</p> <p>25 Q. Second bullet point there says,</p>

24 (Pages 90 to 93)

<p style="text-align: right;">94</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 "FMI Board approves an animal welfare policy</p> <p>3 and program on January 14, 2001."</p> <p>4 A. Correct.</p> <p>5 Q. Do you see that?</p> <p>6 A. Uh-huh.</p> <p>7 Q. If you turn to the next page,</p> <p>8 3058, my question is, is this the policy that</p> <p>9 was approved by FMI's board?</p> <p>10 A. These are bullet points taken</p> <p>11 out of the policy.</p> <p>12 Q. And is it an accurate summary</p> <p>13 of the policy?</p> <p>14 A. Well, it's accurate, but it's</p> <p>15 not exactly the policy language.</p> <p>16 Q. And page 305 --</p> <p>17 A. It wouldn't all fit on the</p> <p>18 slide.</p> <p>19 Q. Page 3059, the next bullet, the</p> <p>20 next page in the slide presentation that's</p> <p>21 entitled, "The Program," is this the program</p> <p>22 that was approved by FMI's board?</p> <p>23 A. Basically, yes. But this is --</p> <p>24 again, this is -- these are bullet points</p> <p>25 taken to be used as an aid to a presentation.</p>	<p style="text-align: right;">96</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. We explained to our suppliers</p> <p>3 that we hope that they would develop animal</p> <p>4 handling guidelines that would provide</p> <p>5 through the process of raising, transporting</p> <p>6 and processing animals for food in an</p> <p>7 environment that was safe and free from abuse</p> <p>8 and neglect.</p> <p>9 Q. The second component of this</p> <p>10 board approved program reads, worked with</p> <p>11 respected animal -- "Work with respected</p> <p>12 animal welfare experts and organizations."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Did FMI form a panel of animal</p> <p>16 welfare experts?</p> <p>17 A. Yes.</p> <p>18 Q. What was the role of that</p> <p>19 expert panel?</p> <p>20 A. That panel, since retailers and</p> <p>21 certainly not the FMI staff have any</p> <p>22 scientific standing to develop any specific</p> <p>23 ideas about how to humanely handle farm</p> <p>24 animals, part of our program was to put</p> <p>25 together a panel of people who did know, and</p>
<p style="text-align: right;">95</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did the board approve the</p> <p>3 policy and program unanimously?</p> <p>4 A. Yes. All 81 of them.</p> <p>5 Q. Look at the program. The first</p> <p>6 component of the program or the first bullet</p> <p>7 point is "Develop retailer expectations for</p> <p>8 use with suppliers."</p> <p>9 A. Correct.</p> <p>10 Q. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Why did FMI's board want to</p> <p>13 develop retailer expectations for use with</p> <p>14 suppliers?</p> <p>15 A. The expectations were that the</p> <p>16 animals would be raised, transported and</p> <p>17 processed, i.e. slaughtered, in an</p> <p>18 environment that was safe and secure and free</p> <p>19 from abuse and neglect. Those were the</p> <p>20 expectations.</p> <p>21 Q. My question is, why were</p> <p>22 expectations or what did it mean to develop</p> <p>23 expectations for use with suppliers? How</p> <p>24 were they to be used with suppliers? What</p> <p>25 was intended there?</p>	<p style="text-align: right;">97</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 they were animal scientists and veterinarians</p> <p>3 primarily.</p> <p>4 Q. Did FMI and its members rely on</p> <p>5 the expertise of that panel in developing</p> <p>6 FMI's animal welfare program?</p> <p>7 A. FMI's program was as it's</p> <p>8 stated in these components, and the part of</p> <p>9 that was for the experts to review the --</p> <p>10 what the producer organizations had at the</p> <p>11 time as far as humane handling of animals.</p> <p>12 So their role was to review it, to lay that</p> <p>13 against the scientific consensus at the time.</p> <p>14 They were all well known, some world</p> <p>15 renowned, specific expertise for each species</p> <p>16 and they would review what the procedures</p> <p>17 were that each producer group was using as</p> <p>18 far as handling your animals, and they would</p> <p>19 make recommendations in some cases for ways</p> <p>20 to enhance or improve that.</p> <p>21 Q. Did FMI and its members rely on</p> <p>22 that review by the animal welfare expert</p> <p>23 panel?</p> <p>24 A. I'm not sure I understand your</p> <p>25 use of the word "rely."</p>

25 (Pages 94 to 97)

<p style="text-align: right;">98</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Well, am I correct that at some</p> <p>3 point FMI made a decision as to whether or</p> <p>4 not to endorse specific producer guidelines?</p> <p>5 MR. RANDALL: Objection to form.</p> <p>6 THE WITNESS: There's a</p> <p>7 semantical issue here, and all of our</p> <p>8 documents that we would send to our</p> <p>9 members, the "we" is a royal we, and</p> <p>10 FMI did not endorse anything</p> <p>11 specifically. Our experts endorsed.</p> <p>12 And if our experts endorsed it, then</p> <p>13 we would say our experts have endorsed</p> <p>14 it. And then the individual companies</p> <p>15 could decide themselves whether or not</p> <p>16 that was something that they would use</p> <p>17 with their individual producers or</p> <p>18 suppliers or not. But we didn't</p> <p>19 develop guidelines, we didn't endorse</p> <p>20 anything. Our experts endorsed. So I</p> <p>21 think that's really important to</p> <p>22 clarify.</p> <p>23 BY MS. SUMNER:</p> <p>24 Q. So is it your testimony,</p> <p>25 Ms. Brown, sitting here today, that FMI did</p>	<p style="text-align: right;">100</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 guidelines were, how they could be</p> <p>3 improved or enhanced on behalf of the</p> <p>4 animals. So in -- so what we did was</p> <p>5 we communicated that our experts --</p> <p>6 those things that our experts had</p> <p>7 endorsed. Does that help?</p> <p>8 BY MS. SUMNER:</p> <p>9 Q. I understand that. And my</p> <p>10 question is much simpler than that. I think</p> <p>11 it's just a yes or no answer.</p> <p>12 Is it your testimony that FMI</p> <p>13 itself did not endorse any individual</p> <p>14 producer guidelines?</p> <p>15 A. Yes.</p> <p>16 MR. WILDERS: Objection. Asked</p> <p>17 and answered. Vague.</p> <p>18 BY MS. SUMNER:</p> <p>19 Q. The third component of the</p> <p>20 program listed on the slide is, "Review</p> <p>21 expectations with producer community."</p> <p>22 Do you see that? I'm going</p> <p>23 back to your presentation.</p> <p>24 A. Yes.</p> <p>25 Q. Did FMI begin a series of</p>
<p style="text-align: right;">99</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 not endorse individual producer guidelines?</p> <p>3 MR. WILDERS: Objection. Asked</p> <p>4 and answered. Argumentative.</p> <p>5 THE WITNESS: What we did was we</p> <p>6 informed our members and the public</p> <p>7 that our experts endorsed.</p> <p>8 BY MS. SUMNER:</p> <p>9 Q. And I just want to be clear. I</p> <p>10 understand that you -- your experts -- your</p> <p>11 testimony is that your experts endorsed</p> <p>12 individual producer guidelines. My question</p> <p>13 to you is, is your testimony that FMI as an</p> <p>14 organization did not endorse individual</p> <p>15 producer guidelines?</p> <p>16 MR. WILDERS: Asked and</p> <p>17 answered.</p> <p>18 THE WITNESS: I have just</p> <p>19 answered it. The terminology is</p> <p>20 important. We hired a group of</p> <p>21 experts to review and either endorse</p> <p>22 or not specific guidelines developed</p> <p>23 by producers, not by FMI, or to make</p> <p>24 suggestions or recommendations for how</p> <p>25 whatever the current state of those</p>	<p style="text-align: right;">101</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 meetings with the producer community to share</p> <p>3 FMI's policy and program?</p> <p>4 A. As I stated before, yes.</p> <p>5 Q. The fourth component of the</p> <p>6 program is, "Distribute expectations as</p> <p>7 voluntary recommendations for retailers to</p> <p>8 adopt." What did that refer to?</p> <p>9 A. Our experts, if they endorsed</p> <p>10 specific guidelines, and in some cases they</p> <p>11 wouldn't endorse all of the guidelines. They</p> <p>12 would endorse maybe some of them and say some</p> <p>13 of them needed to be changed before they</p> <p>14 would say, yes, that is a best practice for</p> <p>15 the humane handling of farm animals. That</p> <p>16 information was given to our members,</p> <p>17 published widely, the news media, supermarket</p> <p>18 news, et cetera, and companies could use it</p> <p>19 as they wanted. They could either -- as they</p> <p>20 would do. They have their own individual</p> <p>21 expectations or -- of what they want of all</p> <p>22 of our suppliers, be it the baker, the fish</p> <p>23 guy, the meat guy. Those are their</p> <p>24 individual programs. And FMI doesn't have</p> <p>25 anything to do with that. There may be best</p>

26 (Pages 98 to 101)

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<p style="text-align: right;">102</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 practices and food safety, sustainability,</p> <p>3 environmental control, animal welfare. We</p> <p>4 certainly, to the extent that we could, would</p> <p>5 share all of that with them in all of those</p> <p>6 areas, and they could use it as they felt it</p> <p>7 fit their company.</p> <p>8 Q. So the idea was to make these</p> <p>9 voluntary expert panel endorsed guidelines</p> <p>10 available for retailers to use in their</p> <p>11 discussions with their suppliers if those</p> <p>12 retailers so chose?</p> <p>13 A. Correct.</p> <p>14 Q. And the fifth component of the</p> <p>15 program is "Support an ongoing advisory</p> <p>16 council." What does that refer to?</p> <p>17 A. That would be the ongoing, you</p> <p>18 know, having the advisory committee, the</p> <p>19 expert committee maintained because it's an</p> <p>20 area, a scientific area where there are many</p> <p>21 changes underway. So what works today may</p> <p>22 not work tomorrow, there may be a better way</p> <p>23 to approach it. There was also concern about</p> <p>24 regulation that was going on in some of the</p> <p>25 states and feeling that if regulation does</p>	<p style="text-align: right;">104</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 expert advisory panel that we just discussed?</p> <p>3 A. Yes.</p> <p>4 Q. The fourth bullet point says,</p> <p>5 "Experts identify gaps in existing industry</p> <p>6 guidelines." What does that refer to?</p> <p>7 A. We asked all the producer</p> <p>8 organizations to share with us what their</p> <p>9 guidelines were at that time. And that was</p> <p>10 given to the experts. They were also asked</p> <p>11 to provide research that supported their</p> <p>12 guidelines. These are scientists looking at</p> <p>13 this. And they then reviewed them and they</p> <p>14 identify areas where they thought</p> <p>15 improvements should or could be made. Those</p> <p>16 are the gaps.</p> <p>17 Q. Then the next bullet point</p> <p>18 says, FMI member committee prioritizes gaps.</p> <p>19 What does that refer to?</p> <p>20 A. I think as they were looking at</p> <p>21 what the experts were recommending as far as</p> <p>22 things that needed to be changed, in their</p> <p>23 mind some of that may have been more</p> <p>24 important than others.</p> <p>25 Q. When you say "their," who are</p>
<p style="text-align: right;">103</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 not result in continuous improvement. And so,</p> <p>3 therefore, to keep the advisory panel in</p> <p>4 place would be a good idea over time.</p> <p>5 Q. Was the advisory panel that</p> <p>6 you're referring to there, is that the expert</p> <p>7 panel --</p> <p>8 A. Correct.</p> <p>9 Q. -- or is that the member</p> <p>10 committee?</p> <p>11 A. No, it's the expert committee.</p> <p>12 Q. The expert panel. Okay.</p> <p>13 Flip to the next page in your</p> <p>14 presentation, this is the slide entitled,</p> <p>15 "January to June 2001."</p> <p>16 A. Uh-huh.</p> <p>17 Q. I'm just going to run through</p> <p>18 these bullet points to make sure that I</p> <p>19 understand. The first one is, "Met with</p> <p>20 producer community and restaurant industry to</p> <p>21 share policy and program." Are those the</p> <p>22 meetings that we've been talking about?</p> <p>23 A. Yes.</p> <p>24 Q. And that formed the panel of</p> <p>25 animal welfare experts, that's the same</p>	<p style="text-align: right;">105</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 you referring to?</p> <p>3 A. Members in general. In other</p> <p>4 words --</p> <p>5 Q. So members on the member</p> <p>6 committee?</p> <p>7 A. Yes, or other members.</p> <p>8 Q. FMI's members?</p> <p>9 A. Yes.</p> <p>10 Q. And why was that function</p> <p>11 delegated to the member committee?</p> <p>12 A. It was --</p> <p>13 - - -</p> <p>14 (Interruption.)</p> <p>15 - - -</p> <p>16 BY MS. SUMNER:</p> <p>17 Q. The question was, why was that</p> <p>18 function delegated to the member committee?</p> <p>19 A. It wasn't a function delegated</p> <p>20 to the member committee. They had one</p> <p>21 meeting where we came back with the initial</p> <p>22 results from the first review of the experts,</p> <p>23 and they took a look at that and they said to</p> <p>24 us, we're not scientists, we're only</p> <p>25 merchants. Some of these things seem more</p>

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<p style="text-align: right;">106</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 important than others. So that's -- that was</p> <p>3 it. It was not an ongoing thing. They</p> <p>4 didn't continue. They could have -- after</p> <p>5 that they just wanted to -- I think from</p> <p>6 their perspective, they wanted to make sure</p> <p>7 that the experts knew what they were doing.</p> <p>8 And other than that, they felt very</p> <p>9 confident. That was -- they never continued</p> <p>10 that function.</p> <p>11 Q. Were the UEP guidelines for egg</p> <p>12 laying hens one of the sets of industry</p> <p>13 guidelines that were reviewed by FMI's expert</p> <p>14 advisory panel?</p> <p>15 A. Yes. And I'll tell you,</p> <p>16 everyone was very impressed at how far along</p> <p>17 UEP was. They were way ahead of the game.</p> <p>18 They had very specific guidelines. They had</p> <p>19 been working on it for some time. They had</p> <p>20 their own expert panel. As a matter of fact,</p> <p>21 Joy Mench who is the world renowned poultry</p> <p>22 expert at UC Davis was one of our advisors</p> <p>23 because we thought that she would be</p> <p>24 extremely helpful to us. So, yeah, UEP had</p> <p>25 very specific guidelines. They had guidance</p>	<p style="text-align: right;">108</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 don't want it on the bottom. So the issue of</p> <p>3 space allocation in all species is an</p> <p>4 important one.</p> <p>5 Q. And that was important to FMI's</p> <p>6 members?</p> <p>7 A. It was important to FMI's</p> <p>8 members from the perspective that this was an</p> <p>9 issue that the animal rights organizations</p> <p>10 were most specifically focusing on.</p> <p>11 Q. Do you recall how FMI's member</p> <p>12 committee prioritized the gaps that were</p> <p>13 identified by the expert panel in the UEP</p> <p>14 program in particular?</p> <p>15 A. No.</p> <p>16 - - -</p> <p>17 (Exhibit Brown-7, 7/2/01 Fax,</p> <p>18 Bates FMI-001129 - FMI-001142, was</p> <p>19 marked for identification.)</p> <p>20 - - -</p> <p>21 BY MS. SUMNER:</p> <p>22 Q. Ms. Brown, I'm showing you a</p> <p>23 document that has been marked as Brown-7.</p> <p>24 This is a fax from the Food Marketing</p> <p>25 Institute. It bears the Bates labels</p>
<p style="text-align: right;">107</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 to their members on how to use them.</p> <p>3 Q. Do you recall whether FMI's</p> <p>4 expert advisory panel identified any gaps --</p> <p>5 A. Yes.</p> <p>6 Q. -- in the UEP guidelines?</p> <p>7 A. Yes.</p> <p>8 Q. And what were those gaps that</p> <p>9 were identified?</p> <p>10 A. Forced molting, not feeding the</p> <p>11 chickens in order to execute a forced molt.</p> <p>12 Ammonia levels higher than what was required</p> <p>13 by EPA for workers. Those are two that stand</p> <p>14 out.</p> <p>15 Q. What about the schedule for</p> <p>16 phasing in cage space requirements?</p> <p>17 A. There was an interest on the</p> <p>18 part of the experts in speeding that up if</p> <p>19 they could. You have to understand that when</p> <p>20 you get 12 chickens in a space this big,</p> <p>21 space allocation becomes an issue. And it</p> <p>22 becomes an issue particularly if the cages</p> <p>23 are stacked one on top of the other. The</p> <p>24 people on the top -- or chickens on the top</p> <p>25 are okay, but as the excrement goes down, you</p>	<p style="text-align: right;">109</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 FMI-001129 through 1142.</p> <p>3 Do you recognize this document</p> <p>4 as a document that you created in your role</p> <p>5 as senior vice president at FMI?</p> <p>6 A. I do.</p> <p>7 Q. Is this a fax that you sent in</p> <p>8 that role?</p> <p>9 A. Yes.</p> <p>10 Q. Who are the -- and was the</p> <p>11 document faxed to the individuals who are in</p> <p>12 the fax to and cc lines on the first page of</p> <p>13 this document?</p> <p>14 A. Yes.</p> <p>15 Q. Who are those individuals, and</p> <p>16 I mean generally?</p> <p>17 A. Executives with member</p> <p>18 companies. They're comprised of public</p> <p>19 affairs executives and operations executives.</p> <p>20 Q. These are of your FMI members?</p> <p>21 Yes?</p> <p>22 A. Yes.</p> <p>23 Q. Is this the member advisory</p> <p>24 committee we've been talking about?</p> <p>25 A. The committee -- well, this</p>

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<p style="text-align: right;">110</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 committee had additional people. As you are</p> <p>3 all familiar with trade associations, when</p> <p>4 you have a committee meeting, often other</p> <p>5 people come to the meeting, but they're not</p> <p>6 necessarily one big committee or the</p> <p>7 committee will change over time.</p> <p>8 Q. So this was the committee plus?</p> <p>9 A. I would say this was the</p> <p>10 committee plus.</p> <p>11 Q. The title of the document here</p> <p>12 is Background For July 9th Meeting in</p> <p>13 Chicago. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. The document is dated July 2,</p> <p>16 2001?</p> <p>17 A. Yes.</p> <p>18 Q. What was the meeting that you</p> <p>19 were providing background materials for here?</p> <p>20 A. It was a meeting of these</p> <p>21 people.</p> <p>22 Q. On the first line of the second</p> <p>23 paragraph it says, "The purpose of our</p> <p>24 meeting is to review and comment on the gaps</p> <p>25 in current producer industry guidelines that</p>	<p style="text-align: right;">112</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Okay.</p> <p>3 Q. Just focusing back on that</p> <p>4 first page where you're addressing this group</p> <p>5 and talking about the purpose of the meeting,</p> <p>6 do you have an understanding as to whether</p> <p>7 the feasibility of changes to current</p> <p>8 guidelines was important to FMI's members?</p> <p>9 A. Certainly FMI's members did not</p> <p>10 want to end up with an expert panel that</p> <p>11 recommended to the producer community</p> <p>12 guidelines that were not practicable in the</p> <p>13 true sense of the word or that would try to</p> <p>14 move the industry if there were parts of the</p> <p>15 producer community that were at square one,</p> <p>16 would try to move them from A to Z in a short</p> <p>17 period of time.</p> <p>18 Q. What was the concern about</p> <p>19 doing that?</p> <p>20 A. Logic.</p> <p>21 Q. What do you mean by that?</p> <p>22 A. Well, basically you want to</p> <p>23 make sure that you're not through guidelines</p> <p>24 to address an issue that animal activists are</p> <p>25 beating you on the head about cause</p>
<p style="text-align: right;">111</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 have been identified by our third party</p> <p>3 animal welfare experts."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Is that the meeting that you</p> <p>7 just referred to where the members took the</p> <p>8 gaps that had been identified and prioritized</p> <p>9 with them?</p> <p>10 A. Yes.</p> <p>11 Q. And the next sentence says,</p> <p>12 "You will help us develop a process to</p> <p>13 determine the feasibility and potential</p> <p>14 economic impact at retail of changes to</p> <p>15 current guidelines."</p> <p>16 Do you see that?</p> <p>17 A. I see that.</p> <p>18 Q. What did you mean?</p> <p>19 A. I'm not sure.</p> <p>20 Q. Do you want to take a moment to</p> <p>21 review this document to see if it refreshes</p> <p>22 your recollection in that regard?</p> <p>23 A. I can skip the cattle part.</p> <p>24 Right?</p> <p>25 Q. Yes.</p>	<p style="text-align: right;">113</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 disruption in the marketplace.</p> <p>3 Q. So it was important that</p> <p>4 whatever was recommended be something that</p> <p>5 the producer community could actually do and</p> <p>6 implement. Is that fair to say?</p> <p>7 MR. RANDALL: Objection.</p> <p>8 Leading.</p> <p>9 MR. WILDERS: Objection.</p> <p>10 THE WITNESS: They wanted to</p> <p>11 make sure that there wasn't anything</p> <p>12 that the experts would recommend that</p> <p>13 would be impossible to execute or</p> <p>14 would be ridiculous to execute. In</p> <p>15 Europe there was a recommendation that</p> <p>16 pigs be given balls to play with. We</p> <p>17 don't necessarily think that pregnant</p> <p>18 sows should be in a gestation crate</p> <p>19 that is too small for them so they</p> <p>20 can't move during their pregnancy, but</p> <p>21 giving the pigs a ball maybe is going</p> <p>22 too far.</p> <p>23 BY MS. SUMNER:</p> <p>24 Q. You also talked about, in your</p> <p>25 earlier answer, you referred to disruption in</p>

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<p style="text-align: right;">114</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 the marketplace, that the members didn't want</p> <p>3 changes to the guidelines to cause disruption</p> <p>4 in the marketplace. What did you mean by</p> <p>5 that?</p> <p>6 A. Nothing specific.</p> <p>7 Q. Well, what disruption in the</p> <p>8 marketplace? I'm not sure I understand what</p> <p>9 that refers to.</p> <p>10 A. Well, if you have a guideline</p> <p>11 that's impossible to implement, and people</p> <p>12 try to implement it, you're going to be</p> <p>13 disrupting the marketplace.</p> <p>14 Q. So was there a concern about</p> <p>15 not having an undue impact on things like</p> <p>16 supply and price in the market?</p> <p>17 MR. WILDERS: Objection.</p> <p>18 Leading. Misstates the witness'</p> <p>19 testimony.</p> <p>20 THE WITNESS: There was no</p> <p>21 discussion that I was ever a part of</p> <p>22 that talked about supply and price.</p> <p>23 BY MS. SUMNER:</p> <p>24 Q. You also wrote here to the</p> <p>25 members that they were going to help develop</p>	<p style="text-align: right;">116</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 be information that would come from</p> <p>3 producers.</p> <p>4 BY MS. SUMNER:</p> <p>5 Q. Well, wouldn't the members have</p> <p>6 been concerned about the impact that adopting</p> <p>7 guidelines could have had on the price of the</p> <p>8 products that they would be purchasing?</p> <p>9 MR. WILDERS: Leading and</p> <p>10 speculation.</p> <p>11 THE WITNESS: There was never</p> <p>12 any discussions like that in any</p> <p>13 meetings that I attended. We never</p> <p>14 had any discussions talking about</p> <p>15 price of the product.</p> <p>16 BY MS. SUMNER:</p> <p>17 Q. We'll look at some documents</p> <p>18 later, maybe that will help refresh your</p> <p>19 recollection.</p> <p>20 MR. WILDERS: Objection.</p> <p>21 Argumentative.</p> <p>22 MS. SUMNER: Move forward.</p> <p>23 BY MS. SUMNER:</p> <p>24 Q. Let's go back to the</p> <p>25 presentation. Actually I want to ask you one</p>
<p style="text-align: right;">115</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 a process to determine the potential economic</p> <p>3 impact at retail of changes to the current</p> <p>4 guidelines?</p> <p>5 A. Where are you reading?</p> <p>6 Q. Second sentence here, second</p> <p>7 paragraph on the first page of this fax that</p> <p>8 you wrote.</p> <p>9 A. Right.</p> <p>10 Q. You are talking about the</p> <p>11 purpose of the meeting is to review and</p> <p>12 comment. "You will help us to develop a</p> <p>13 process to determine the...potential economic</p> <p>14 impact at retail of changes to the current</p> <p>15 guidelines." What did you mean by that?</p> <p>16 A. I'm not quite sure.</p> <p>17 Q. Did you have an -- do you have</p> <p>18 an understanding as to whether the potential</p> <p>19 economic impact at retail of changes to the</p> <p>20 current guidelines was important to FMI's</p> <p>21 members?</p> <p>22 MR. WILDERS: Objection. Vague.</p> <p>23 THE WITNESS: I think that would</p> <p>24 be something -- our members would not</p> <p>25 have had that information. That would</p>	<p style="text-align: right;">117</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 quick question about this document. If you</p> <p>3 turn to 1131 in this document that's been</p> <p>4 marked as Brown-7, the document entitled,</p> <p>5 "BOARD APPROVED POLICY," and then it has</p> <p>6 policy and program components.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Is this the actual board</p> <p>9 approved policy and program that we discussed</p> <p>10 earlier?</p> <p>11 A. As it says on top, it was</p> <p>12 adopted January 14, 2001.</p> <p>13 Q. And this is the official board</p> <p>14 approved copy?</p> <p>15 A. Yes, it is.</p> <p>16 Q. Let's go back to Brown-3. This</p> <p>17 is the global OIE conference presentation.</p> <p>18 And turn to the slide that bears the Bates</p> <p>19 number 3061, it's entitled, "FMI-NCCR</p> <p>20 Collaboration."</p> <p>21 A. When is your time up, by the</p> <p>22 way?</p> <p>23 MR. GREEN: Do you need a break?</p> <p>24 THE WITNESS: How much time have</p> <p>25 we gone by now?</p>

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<p style="text-align: right;">118</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MS. SUMNER: We've been going</p> <p>3 probably about an hour and a half so</p> <p>4 if you'd like to take a break now --</p> <p>5 THE WITNESS: Only an hour and a</p> <p>6 half? Are you sure?</p> <p>7 MR. GREEN: I think it's closer</p> <p>8 to two hours.</p> <p>9 THE WITNESS: That's what I'm</p> <p>10 wondering, because it's almost 1:00.</p> <p>11 MS. ANDERSON: Go off the</p> <p>12 record.</p> <p>13 THE WITNESS: It's almost 1:00.</p> <p>14 MS. SUMNER: Go off the record,</p> <p>15 we're not to going to waste time.</p> <p>16 VIDEOGRAPHER: This is the end</p> <p>17 of videotape one in the deposition of</p> <p>18 Karen Brown. We're off the record at</p> <p>19 12:39.</p> <p>20 - - -</p> <p>21 (A recess was taken.)</p> <p>22 - - -</p> <p>23 VIDEOGRAPHER: Here begins tape</p> <p>24 two in the videotape deposition of</p> <p>25 Karen Brown. We're back on the record</p>	<p style="text-align: right;">120</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 witness wrote on the exhibit, just for</p> <p>3 the record.</p> <p>4 BY MS. SUMNER:</p> <p>5 Q. In this article that you</p> <p>6 drafted, you list four advantages of the</p> <p>7 single industry approach. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. I want to talk for a moment</p> <p>10 about those advantages. The third one reads,</p> <p>11 "avoidance of market-driven competition on an</p> <p>12 issue that affected all the food animal</p> <p>13 industries."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. What did you mean by "avoidance</p> <p>17 of market-driven competition on an issue that</p> <p>18 affected all the food animal industries"?</p> <p>19 A. As I stated earlier, if you</p> <p>20 have individual companies asking for</p> <p>21 different approaches to a single issue that</p> <p>22 such as animal welfare where the companies</p> <p>23 are interested in the producers improving,</p> <p>24 enhancing, advancing their animal handling</p> <p>25 for humane purposes, it makes it very</p>
<p style="text-align: right;">119</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 at 1:01.</p> <p>3 BY MS. SUMNER:</p> <p>4 Q. Ms. Brown, I'd like to direct</p> <p>5 your attention back to Brown Exhibit 2. This</p> <p>6 is the article that you authored with</p> <p>7 Ms. Hollingsworth. I want to direct your</p> <p>8 attention to page 657 of the article. And</p> <p>9 under the heading "Joint programme," I want</p> <p>10 to direct you to about two-thirds of the way</p> <p>11 down that first paragraph, it says,</p> <p>12 "Therefore, in June 2001..." Do you see</p> <p>13 where I am?</p> <p>14 A. I do.</p> <p>15 Q. "Therefore, in June 2001, the</p> <p>16 FMI and the NCCR joined their parallel</p> <p>17 efforts."</p> <p>18 Is that an accurate statement?</p> <p>19 A. Yes.</p> <p>20 Q. "In making this decision, the</p> <p>21 two organizations considered the advantages</p> <p>22 of a single industry approach."</p> <p>23 Is that an accurate statement?</p> <p>24 A. Yes.</p> <p>25 COURT REPORTER: Excuse me. The</p>	<p style="text-align: right;">121</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 difficult, it's inefficient. It makes it</p> <p>3 very difficult from the standpoint of the</p> <p>4 producers. They have to do things</p> <p>5 differently for individual organizations.</p> <p>6 They have to subject themselves to multiple</p> <p>7 inspections if there's an inspection program</p> <p>8 involved, et cetera.</p> <p>9 Q. Let's turn back to your</p> <p>10 presentation, and we're up to the slide</p> <p>11 entitled, "FMI-NCCR Collaboration" which is</p> <p>12 on Bates number 3061.</p> <p>13 A. Correct.</p> <p>14 Q. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. The last bullet point there</p> <p>17 says, "FMI and NCCR undertake one-on-one</p> <p>18 meetings with producer community to give</p> <p>19 feedback on how enhance current industry</p> <p>20 guidelines."</p> <p>21 A. Yes.</p> <p>22 Q. Did those meetings occur?</p> <p>23 A. Yes.</p> <p>24 Q. And during what time period</p> <p>25 approximately were those meetings conducted?</p>

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<p style="text-align: right;">122</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. I do not remember.</p> <p>3 Q. Did FMI reach out to UEP as one</p> <p>4 of the producer organizations to discuss</p> <p>5 UEP's Animal Welfare Guidelines?</p> <p>6 A. Yes.</p> <p>7 MR. WILDERS: Asked and</p> <p>8 answered. Misstates the testimony.</p> <p>9 BY MS. SUMNER:</p> <p>10 Q. And when did FMI meet with</p> <p>11 UEP --</p> <p>12 A. I don't remember.</p> <p>13 Q. -- to discuss the feedback on</p> <p>14 how to enhance UEP's guidelines?</p> <p>15 A. I don't remember specifically.</p> <p>16 Q. Do you remember generally that</p> <p>17 meeting?</p> <p>18 A. I remember the meeting, yes.</p> <p>19 Q. Was there one meeting or</p> <p>20 multiple meetings to talk specifically about</p> <p>21 how to enhance the UEP guidelines?</p> <p>22 A. There was more than one</p> <p>23 meeting.</p> <p>24 Q. Who from FMI attended those</p> <p>25 meetings?</p>	<p style="text-align: right;">124</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Haven't a clue.</p> <p>3 Q. Were there fewer than ten?</p> <p>4 A. I don't remember.</p> <p>5 Q. Were there more than five?</p> <p>6 A. I don't remember. Trade</p> <p>7 associations have a lot of meetings, lots and</p> <p>8 lots of meetings.</p> <p>9 - - -</p> <p>10 (Exhibit Brown-8, 8/13/01 Fax,</p> <p>11 Bates FMI-001099 - FMI-001117, was</p> <p>12 marked for identification.)</p> <p>13 - - -</p> <p>14 BY MS. SUMNER:</p> <p>15 Q. I'm going to show you a</p> <p>16 document that's been marked as Brown</p> <p>17 Exhibit 8.</p> <p>18 A. Do you need to mark a new</p> <p>19 document since I circled that?</p> <p>20 Q. No. We'll just leave that.</p> <p>21 A. Oh, best regards from me.</p> <p>22 Q. Ms. Brown, do you recognize the</p> <p>23 document that has been marked as Brown-8?</p> <p>24 A. In the context of I see it's an</p> <p>25 FMI document sent by me, yes, I recognize it.</p>
<p style="text-align: right;">123</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. It depended. Sometimes we</p> <p>3 would bring in Joy Mench because these</p> <p>4 were -- this was feedback from the experts.</p> <p>5 Our CEO sat in on some of the meetings. Jill</p> <p>6 sat in on all the meetings. Terrie Dort of</p> <p>7 NCCR sat in on the meetings.</p> <p>8 Q. Were you present for all of the</p> <p>9 meetings?</p> <p>10 A. I was present for all of the</p> <p>11 meetings, yes.</p> <p>12 Q. When you say your CEO, are you</p> <p>13 referring to Tim Hammonds?</p> <p>14 A. Correct.</p> <p>15 Q. Who from UEP attended those</p> <p>16 meetings?</p> <p>17 A. I don't remember. It could</p> <p>18 have been Gene Gregory, Gene and Al. It</p> <p>19 could have been Ken. It could have been some</p> <p>20 of their members. If they wanted to bring</p> <p>21 their members, we would generally try to have</p> <p>22 Joy there, if we could.</p> <p>23 Q. Do you have a recollection</p> <p>24 today as to approximately how many meetings</p> <p>25 there were on this particular issue with UEP?</p>	<p style="text-align: right;">125</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And did you create this</p> <p>3 document in your role as senior vice</p> <p>4 president at FMI?</p> <p>5 A. Yes.</p> <p>6 Q. And is this a document that you</p> <p>7 faxed to the individuals who are listed in</p> <p>8 the fax to and cc columns on the front page</p> <p>9 of the document?</p> <p>10 A. Yes.</p> <p>11 Q. Who are the individuals to whom</p> <p>12 this document was faxed?</p> <p>13 A. Executives with our member</p> <p>14 companies.</p> <p>15 Q. And was this document created</p> <p>16 by you on or about August 13, 2001?</p> <p>17 A. That's what it says.</p> <p>18 Q. And was that when,</p> <p>19 approximately when it was sent?</p> <p>20 A. It would have been sent on that</p> <p>21 day.</p> <p>22 Q. If you can turn to the second</p> <p>23 and third pages of this document which bear</p> <p>24 the Bates numbers FMI-001100 through 01.</p> <p>25 They're entitled FLIP CHART NOTES July 9,</p>

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<p style="text-align: right;">126</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 2001 - Chicago, Illinois. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Are these notes from the</p> <p>5 meeting of the member -- I'm sorry.</p> <p>6 Are these notes from the member</p> <p>7 meeting that took place on July 9, 2001, in</p> <p>8 Chicago that we discussed earlier?</p> <p>9 A. I would assume so.</p> <p>10 Q. Did you attend that meeting?</p> <p>11 A. I did.</p> <p>12 Q. Did you take these notes?</p> <p>13 A. I wrote on the flip charts,</p> <p>14 yes.</p> <p>15 Q. And did you take these notes at</p> <p>16 or near the time of the meeting?</p> <p>17 A. I would have taken them at the</p> <p>18 meeting.</p> <p>19 Q. And do they accurately depict</p> <p>20 the discussion at the meeting?</p> <p>21 A. I assume so.</p> <p>22 Q. And were these notes made by</p> <p>23 you in your role as senior vice president for</p> <p>24 FMI?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">128</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. So these were the experts'</p> <p>3 recommendations for improvements that could</p> <p>4 be made in the UEP program or issues that had</p> <p>5 to be addressed in the UEP program?</p> <p>6 MR. WILDERS: Objection.</p> <p>7 Leading.</p> <p>8 THE WITNESS: These were the</p> <p>9 issues that the experts raised from</p> <p>10 the standpoint of all laying hen</p> <p>11 operations. And the only document</p> <p>12 that they had to review was the UEP</p> <p>13 document. So it was based on the UEP</p> <p>14 guideline document that existed at the</p> <p>15 time.</p> <p>16 BY MS. SUMNER:</p> <p>17 Q. And do you recall that one of</p> <p>18 the things that was listed as an action item</p> <p>19 or an activity to be done at the meeting was</p> <p>20 for the member advisory committee to rank,</p> <p>21 order the gaps or to prioritize the gaps?</p> <p>22 MR. RANDALL: Objection to form.</p> <p>23 THE WITNESS: I don't recall,</p> <p>24 but -- I mean, I don't recall that as</p> <p>25 a specific.</p>
<p style="text-align: right;">127</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And were these notes kept by</p> <p>3 FMI in the regular course of its business?</p> <p>4 A. Yes.</p> <p>5 Q. I want to direct your attention</p> <p>6 to the egg laying hens portion of this</p> <p>7 document. It says, "EGG LAYING HEN ISSUES."</p> <p>8 A. Yes.</p> <p>9 Q. And it lists multiple issues.</p> <p>10 A. Yes.</p> <p>11 Q. Are these the gaps that were</p> <p>12 identified by the expert advisory panel that</p> <p>13 FMI put together?</p> <p>14 A. These would have been issues</p> <p>15 that the experts thought should be improved</p> <p>16 or changed.</p> <p>17 Q. And I think you referred to</p> <p>18 those as gaps. Is that right?</p> <p>19 A. Yes. Just -- yes.</p> <p>20 Q. And are these --</p> <p>21 A. Gaps between their practices</p> <p>22 which the experts thought were best practices</p> <p>23 and those which they didn't, the experts</p> <p>24 didn't feel were the best practices at the</p> <p>25 time.</p>	<p style="text-align: right;">129</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. SUMNER:</p> <p>3 Q. Let's look back, I just want to</p> <p>4 make sure that I get these right.</p> <p>5 A. I could be confused because of</p> <p>6 the questions being asked in a different</p> <p>7 manner.</p> <p>8 Q. Well, I certainly don't want to</p> <p>9 confuse you. So let's look back, just</p> <p>10 keep -- you can keep this document out, but</p> <p>11 if you can turn to Exhibit 3, and let's look</p> <p>12 back at the page that's Bates numbered 3060.</p> <p>13 A. 3060.</p> <p>14 Q. This is the "January to</p> <p>15 June 2001" slide.</p> <p>16 A. I hope all this was done by</p> <p>17 some machine, all these numbers.</p> <p>18 Q. So you see the last bullet</p> <p>19 point there are "Experts identify gaps in</p> <p>20 existing industry guidelines."</p> <p>21 A. Yes.</p> <p>22 Q. So the gaps identified in the</p> <p>23 UEP industry guidelines are the ones that are</p> <p>24 listed on this flip chart notes document</p> <p>25 under egg laying hen issues. Is that</p>

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<p style="text-align: right;">130</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 correct?</p> <p>3 A. These are the gaps. Whether</p> <p>4 they were specific to UEP's guidelines,</p> <p>5 I'm --</p> <p>6 Q. Was there any other document or</p> <p>7 set of guidelines with respect to egg laying</p> <p>8 hens that your expert advisory panel was</p> <p>9 reviewing?</p> <p>10 MR. WILDERS: Objection.</p> <p>11 Assumes facts.</p> <p>12 THE WITNESS: No. But they also</p> <p>13 were aware of guidelines from other</p> <p>14 places, Canada, Europe, et cetera.</p> <p>15 BY MS. SUMNER:</p> <p>16 Q. Were there other guidelines for</p> <p>17 egg laying hens that the advisory committee</p> <p>18 consulted in its work?</p> <p>19 A. Specifically for us?</p> <p>20 Q. Yes.</p> <p>21 A. No, but it was all within the</p> <p>22 context of the consensus, scientific animal</p> <p>23 science consensus at the time of what were</p> <p>24 the issues that were most important. And it</p> <p>25 was looking at any guidelines that they had</p>	<p style="text-align: right;">132</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 space allocation was the number one issue.</p> <p>3 Q. Looking at this document, let's</p> <p>4 turn back to Brown-8, the egg laying hen</p> <p>5 issues identified in the flip chart notes</p> <p>6 portion of the document.</p> <p>7 A. Yes.</p> <p>8 Q. The first one is Space - a</p> <p>9 range or 72 inch minimum.</p> <p>10 A. Right.</p> <p>11 Q. Do you recall what was</p> <p>12 discussed at the July 9th meeting about that</p> <p>13 issue?</p> <p>14 A. I haven't a clue.</p> <p>15 Q. What was the concern or gap</p> <p>16 identified by the expert advisory panel with</p> <p>17 respect to space for egg laying hens?</p> <p>18 A. They were concerned that the</p> <p>19 timing needed to be pushed forward. In other</p> <p>20 words, they thought that the time that the</p> <p>21 industry was proposing for getting to the 72</p> <p>22 minimum, I presume, needed to be enhanced.</p> <p>23 Q. When you say "enhanced," you</p> <p>24 mean shortened?</p> <p>25 A. Sooner.</p>
<p style="text-align: right;">131</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 before then depending upon the species, they</p> <p>3 knew what the scientific consensus was on the</p> <p>4 issues that were most important and were they</p> <p>5 addressed in the guidelines that the</p> <p>6 producers shared with them.</p> <p>7 Q. The last bullet point then</p> <p>8 says, "FMI member committee prioritizes</p> <p>9 gaps."</p> <p>10 A. Yes.</p> <p>11 Q. We had a discussion about that,</p> <p>12 remember?</p> <p>13 A. Yes.</p> <p>14 Q. My question simply was, are the</p> <p>15 egg laying hen issues that you recorded on</p> <p>16 the flip chart notes document that's been</p> <p>17 marked in Brown-8 in the order in which the</p> <p>18 member committee prioritized them?</p> <p>19 A. I don't recall. But the</p> <p>20 members, from their perspective, what they</p> <p>21 would be worrying most about were the issues</p> <p>22 that would be before their customers. And</p> <p>23 definitely from the standpoint of media and,</p> <p>24 you know, animal activist campaigns, and the</p> <p>25 responses from the quick serve industry,</p>	<p style="text-align: right;">133</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you recall what UEP's</p> <p>3 original proposal was on cage space phase-in?</p> <p>4 A. No.</p> <p>5 Q. Let me direct your attention to</p> <p>6 some pages later in Brown Exhibit 8. So</p> <p>7 turn, please, to the pages that are marked</p> <p>8 FMI-1102 through 1105.</p> <p>9 A. Okay. You want me to read all</p> <p>10 these or you only want me to read the egg</p> <p>11 part?</p> <p>12 Q. Let me ask you just about the</p> <p>13 document first so we can get through this</p> <p>14 authentication part.</p> <p>15 A. Okay.</p> <p>16 Q. Do you recognize these as</p> <p>17 minutes from a meeting of the FMI expert</p> <p>18 review panel?</p> <p>19 A. It was a conference call, yes.</p> <p>20 Q. And were minutes kept for all</p> <p>21 meetings or conference calls of the animal</p> <p>22 welfare expert review panel?</p> <p>23 A. Summaries of the meetings.</p> <p>24 Summaries.</p> <p>25 Q. Is this one of those summaries?</p>

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<p style="text-align: right;">134</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And who created this summary?</p> <p>4 A. I did.</p> <p>5 Q. And was this summary created at</p> <p>6 or around the time of this conference call?</p> <p>7 A. It was created -- yes. Well,</p> <p>8 it would have been created after. It would</p> <p>9 have been created as a record of the notes</p> <p>10 that I kept of the conference call.</p> <p>11 Q. And you kept the -- you drafted</p> <p>12 these notes on June 6th or close in time?</p> <p>13 A. I would presume so. It would</p> <p>14 be kind of hard to -- I mean, this was very</p> <p>15 detailed stuff. I would have kept the notes</p> <p>16 at the time of the call.</p> <p>17 Q. And you participated in this</p> <p>18 call. Correct?</p> <p>19 A. Yes. No, I kept the notes from</p> <p>20 my home through some sort of system of mind</p> <p>21 reading and osmosis.</p> <p>22 Q. And were those minutes</p> <p>23 maintained as part of the regular business of</p> <p>24 FMI?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">136</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 size of egg layers is big issue."</p> <p>3 Do you see that?</p> <p>4 A. Yes. Yes.</p> <p>5 Q. How so?</p> <p>6 A. That was the primary issue that</p> <p>7 everyone was focusing on. If you go back to</p> <p>8 the -- I don't know how many chickens can fit</p> <p>9 on an 8-and-a-half-by-11 sheet of paper, and</p> <p>10 some of the exposés that had been done by the</p> <p>11 animal activists which were shown on the</p> <p>12 news, the Internet campaigns that were</p> <p>13 underway, the allegations that were being</p> <p>14 made by PETA about the practices within the</p> <p>15 egg industry, and, you know, some of it was</p> <p>16 probably not all true. But it painted a very</p> <p>17 graphic picture and that made it a very big</p> <p>18 issue.</p> <p>19 MR. PATTON: The record should</p> <p>20 reflect for the transcript that the</p> <p>21 witness has been holding up a piece of</p> <p>22 paper that's 8 and a half by 11.</p> <p>23 MS. SUMNER: Okay. Doug, we</p> <p>24 don't need the speaking objections.</p> <p>25 MR. PATTON: I'm entitled to</p>
<p style="text-align: right;">135</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. On the bottom of page 2 it</p> <p>3 says --</p> <p>4 A. 1002, 102?</p> <p>5 Q. 1003. It's page 2 of the</p> <p>6 document, the Bates number for litigation</p> <p>7 purposes of 1003. Do you see where it says,</p> <p>8 "CHICKENS: EGG-LAYERS"?</p> <p>9 A. Yes.</p> <p>10 Q. First bullet point says, "Three</p> <p>11 gaps: space; forced molting; and disposal."</p> <p>12 A. Yes, putting the chickens when</p> <p>13 they're spent in a plastic bag and tying the</p> <p>14 top is not a good method.</p> <p>15 Q. So those were the gaps -- those</p> <p>16 were gaps identified by the expert advisory</p> <p>17 panel. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. And gaps in the existing UEP</p> <p>20 guidelines?</p> <p>21 A. Yes. Although I don't think</p> <p>22 their guidelines actually said put them in a</p> <p>23 plastic bag and tie them up.</p> <p>24 Q. I'm sure they did not.</p> <p>25 The second point says, "Cage</p>	<p style="text-align: right;">137</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 make a note for the record.</p> <p>3 MS. SUMNER: Doug, there's a</p> <p>4 video and this is our time. You can</p> <p>5 take it out of your time. Okay?</p> <p>6 MR. PATTON: We have a video,</p> <p>7 but also have a transcript.</p> <p>8 BY MS. SUMNER:</p> <p>9 Q. If you could flip to page 3.</p> <p>10 A. Well, I did say 12, you know,</p> <p>11 whatever the number of chickens was, about a</p> <p>12 dozen chickens inside an 8-and-a-half-by-11</p> <p>13 size footprint of a cage. That's a lot of</p> <p>14 chickens.</p> <p>15 Q. It is a lot of chickens in a</p> <p>16 very small space.</p> <p>17 A. Even if it was only six</p> <p>18 chickens, it's still a lot of chickens.</p> <p>19 Q. That's a lot of chickens.</p> <p>20 If you'd flip to page 3, the</p> <p>21 top bullet point reads, Recommendations is</p> <p>22 for minimum 72 square inches floor space.</p> <p>23 UEP said it would meet this standard (67 to</p> <p>24 72 square inches) in ten years -- not</p> <p>25 acceptable to expert panel.</p>

35 (Pages 134 to 137)

<p style="text-align: right;">138</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Does that refresh your</p> <p>3 recollection as to what UEP's original</p> <p>4 proposal was for the time in which it was</p> <p>5 going to phase in the cage space requirement?</p> <p>6 A. I still don't recall it, but</p> <p>7 I'm sure it's true.</p> <p>8 Q. So it was ten years?</p> <p>9 A. If that's what this says, yes.</p> <p>10 Q. It says, "not acceptable to</p> <p>11 expert panel."</p> <p>12 Do you see that?</p> <p>13 A. Correct.</p> <p>14 Q. What was not acceptable to the</p> <p>15 expert panel?</p> <p>16 A. That they take ten years.</p> <p>17 Q. What did the expert panel want</p> <p>18 or recommend?</p> <p>19 A. That they speed it up.</p> <p>20 Q. Did FMI's members encourage UEP</p> <p>21 to implement the cage space requirements as</p> <p>22 quickly as possible?</p> <p>23 A. FMI's members looked to the</p> <p>24 expert panel to make recommendations. And if</p> <p>25 the experts were making recommendations,</p>	<p style="text-align: right;">140</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 gaps as described, technically or</p> <p>3 specifically, they're running their business.</p> <p>4 Q. And they also ranked those gaps</p> <p>5 in order of priority. Correct?</p> <p>6 A. They thought that the most</p> <p>7 important gap from their perspective was the</p> <p>8 one that was the most visible to the</p> <p>9 consumer, their customers. And that was the</p> <p>10 space allocation. And that was because it</p> <p>11 was being focused on in the news media, by</p> <p>12 the activists, letters they were getting from</p> <p>13 PETA. That's why it became the most</p> <p>14 important issue to them.</p> <p>15 Q. I understand that. I just want</p> <p>16 to make sure that I'm understanding your</p> <p>17 testimony correctly, though, that you</p> <p>18 recently just said I don't know if they</p> <p>19 understood exactly what the gaps were. My</p> <p>20 question to you was, in fact, on July 9,</p> <p>21 2001, you held a meeting where the members</p> <p>22 were not only apprised of the gaps, but they,</p> <p>23 in fact, ranked them in order of priority.</p> <p>24 Correct?</p> <p>25 A. Space allocation.</p>
<p style="text-align: right;">139</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 those were being made through FMI to UEP and</p> <p>3 our members individually were not, to my</p> <p>4 knowledge, involved in those discussions</p> <p>5 directly with UEP. They may have had</p> <p>6 discussions with their own suppliers, but I</p> <p>7 have no knowledge of that. So I have no</p> <p>8 knowledge of that. I do not know.</p> <p>9 Q. Were your members apprised of</p> <p>10 the recommendations that, or the gaps that</p> <p>11 were identified by the expert --</p> <p>12 A. Yes.</p> <p>13 Q. -- panel?</p> <p>14 A. Yes. As I said before, we have</p> <p>15 a system of communication. And this document</p> <p>16 actually is sent to the members, so they</p> <p>17 certainly were apprised of it through this.</p> <p>18 Did they read UEP's guidelines? I doubt it.</p> <p>19 Q. But they did understand the</p> <p>20 gaps that were identified by the expert</p> <p>21 panel. Correct?</p> <p>22 A. They understood there were</p> <p>23 gaps. If they understood exactly what the</p> <p>24 gaps were, I don't know. But they understood</p> <p>25 that there were gaps and they understood the</p>	<p style="text-align: right;">141</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. RANDALL: Objection to form.</p> <p>3 MR. WILDERS: Also misstates the</p> <p>4 document.</p> <p>5 BY MS. SUMNER:</p> <p>6 Q. You can answer the question.</p> <p>7 A. What is the question, again?</p> <p>8 Q. The question --</p> <p>9 A. And what document -- what are</p> <p>10 you referring to? You know how -- I'm sorry,</p> <p>11 but I want to make sure I know exactly what</p> <p>12 meeting are you talking about. What</p> <p>13 document --</p> <p>14 Q. I'm talking about the July 9th</p> <p>15 meeting. And if it helps you, you sent an</p> <p>16 agenda of sorts for that meeting to the</p> <p>17 members, it was marked as Brown-7.</p> <p>18 A. Okay.</p> <p>19 Q. And my question is, at this</p> <p>20 meeting --</p> <p>21 A. Yes.</p> <p>22 Q. -- the gaps --</p> <p>23 A. Under item 4, "a summary of the</p> <p>24 June conference call"?</p> <p>25 Q. No. I'm sorry. I'm just --</p>

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<p style="text-align: right;">142</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 the July 9th -- I'm sorry, it's July 2, 2001.</p> <p>3 At the July 2, 2001, meeting, I think we</p> <p>4 talked about this multiple times and I don't</p> <p>5 mean to belabor this point, but I just want</p> <p>6 to make sure that the record --</p> <p>7 A. You're doing a good job of</p> <p>8 that.</p> <p>9 Q. -- is clear, that at that</p> <p>10 meeting, the members who attended that</p> <p>11 meeting were apprised of the gaps that were</p> <p>12 identified by the FMI expert advisory panel.</p> <p>13 Correct?</p> <p>14 MR. RANDALL: Objection to form.</p> <p>15 THE WITNESS: As background to</p> <p>16 the meeting, they had a copy of the</p> <p>17 summary of the flip charts from the</p> <p>18 experts' meeting which identified the</p> <p>19 four items you see on there, space</p> <p>20 allocation being number one.</p> <p>21 BY MS. SUMNER:</p> <p>22 Q. And as reflected in your</p> <p>23 presentation to OIE --</p> <p>24 A. Okay.</p> <p>25 Q. -- one thing that that member</p>	<p style="text-align: right;">144</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 want to buy. And humane handling is an</p> <p>3 important issue to consumers today. And,</p> <p>4 therefore, retailers are thereby concerned</p> <p>5 about it.</p> <p>6 So from the standpoint of them</p> <p>7 prioritizing, they weren't getting involved</p> <p>8 in the scientific, technical or the reading</p> <p>9 the guidelines off all these producer groups</p> <p>10 because you've got all five or six species</p> <p>11 here, they wanted to know what the experts</p> <p>12 thought were the most important areas that</p> <p>13 needed to be improved. And they looked at it</p> <p>14 from their perspective of what is it that my</p> <p>15 consumers are hearing about right now, what</p> <p>16 is it my customers are concerned about, what</p> <p>17 are they asking questions about. That's the</p> <p>18 most important gap to me.</p> <p>19 Q. And the experts identified the</p> <p>20 ten-year phase-in requirement for the cage</p> <p>21 space requirement as unacceptable. Correct?</p> <p>22 MR. WILDERS: Asked and</p> <p>23 answered.</p> <p>24 THE WITNESS: They thought it</p> <p>25 had -- it should be shortened.</p>
<p style="text-align: right;">143</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 committee did at that meeting, and this is on</p> <p>3 page 3060, was prioritize those gaps?</p> <p>4 A. Yes. Yes. Our members had two</p> <p>5 basic concerns. One, they knew from the</p> <p>6 quick and dirty non-publishable research that</p> <p>7 we did of focus groups that consumers wanted</p> <p>8 to make sure that farm animals for food were</p> <p>9 handled humanely. They didn't want to know</p> <p>10 anything about what happened to the little</p> <p>11 baby chick until it ended up in the</p> <p>12 supermarket case as a -- in the meat case.</p> <p>13 They didn't want to know about anything that</p> <p>14 happened in between. But they did think that</p> <p>15 the supermarket as the buying agent for the</p> <p>16 customer had a responsibility to make sure</p> <p>17 that its suppliers were treating those</p> <p>18 animals humanely if they were producers</p> <p>19 raised in the growing, transportation and</p> <p>20 processing. So if it is an issue that is</p> <p>21 important to consumers, it is an issue that</p> <p>22 is important to retailers. They are not</p> <p>23 product or process specific. They will sell</p> <p>24 what consumers want to buy, and they will</p> <p>25 sell the kinds of products that consumers</p>	<p style="text-align: right;">145</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. SUMNER:</p> <p>3 Q. And indeed on the notes that</p> <p>4 you took of the meeting, you wrote, "not</p> <p>5 acceptable to expert panel."</p> <p>6 A. That's their language.</p> <p>7 Q. And that's an accurate</p> <p>8 reflection of what they said. Correct?</p> <p>9 A. Yes.</p> <p>10 MR. RANDALL: Objection to form.</p> <p>11 BY MS. SUMNER:</p> <p>12 Q. Because you took these notes.</p> <p>13 Right?</p> <p>14 MR. WILDERS: Asked and</p> <p>15 answered.</p> <p>16 THE WITNESS: Well, I'm not sure</p> <p>17 I remember whether -- yes, I did.</p> <p>18 BY MS. SUMNER:</p> <p>19 Q. Was the phase-in period a topic</p> <p>20 of discussion between FMI and UEP?</p> <p>21 A. It would have been something</p> <p>22 that we would have given feedback. And,</p> <p>23 again, we were giving feedback to the</p> <p>24 producers of what our experts said. And we</p> <p>25 had one-on-one meetings because we thought</p>

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<p style="text-align: right;">146</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 that was the best way to go about it. We</p> <p>3 didn't think that it was fair to sit in a</p> <p>4 meeting with all the producer organizations</p> <p>5 and tell them the areas where the experts</p> <p>6 thought they should do a better job. So</p> <p>7 that's why we had individual meetings.</p> <p>8 In some cases, as before you</p> <p>9 ask the question, you know, they would have</p> <p>10 some of their members there to explain from</p> <p>11 the producer standpoint what the challenges</p> <p>12 were in egg laying as far as that particular</p> <p>13 part of farming. And if possible, we would</p> <p>14 have Joy Mench there if we could, so that she</p> <p>15 could explain from the scientist, the animal</p> <p>16 science perspective, why this was so</p> <p>17 important and what the negative ramifications</p> <p>18 were to the animal. All this was focused on</p> <p>19 how the animals were being treated before</p> <p>20 they were processed for food. That's the</p> <p>21 main focus of all of this. That was really</p> <p>22 FMI's interest and the expert's focus.</p> <p>23 Q. In FMI's meeting with UEP --</p> <p>24 A. Which I don't remember the</p> <p>25 details of.</p>	<p style="text-align: right;">148</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. SUMNER:</p> <p>3 Q. This is a document that is --</p> <p>4 it's a letter that's addressed to you, senior</p> <p>5 vice president of the FMI Food Marketing</p> <p>6 Institute. Is that correct?</p> <p>7 A. Right here in this building.</p> <p>8 Q. Did you receive this letter</p> <p>9 from UEP in your role as SVP of FMI?</p> <p>10 A. I don't recall. But I would --</p> <p>11 if it came to me, I received it.</p> <p>12 Q. Do you have any reason to</p> <p>13 believe that you did not receive this</p> <p>14 letter --</p> <p>15 A. No.</p> <p>16 Q. -- from UEP on or about</p> <p>17 December 11, 2001?</p> <p>18 A. No. I would like to read it,</p> <p>19 though, if you're going to ask me questions</p> <p>20 about it.</p> <p>21 Q. I am going to ask you a</p> <p>22 question just about the first two sentences,</p> <p>23 but feel free to look at the whole thing if</p> <p>24 you'd like.</p> <p>25 I want to focus on, it says,</p>
<p style="text-align: right;">147</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. -- did FMI communicate to UEP</p> <p>3 that the ten-year proposed phase-in was not</p> <p>4 acceptable to FMI's expert advisory panel?</p> <p>5 A. Yes. We told them that the</p> <p>6 experts thought it should be shortened.</p> <p>7 Q. Did UEP shorten the timetable?</p> <p>8 A. I don't recall that.</p> <p>9 - - -</p> <p>10 (Exhibit Brown-9, 12/11/01</p> <p>11 Letter, Bates UE0178561 & UE0178562,</p> <p>12 was marked for identification.)</p> <p>13 - - -</p> <p>14 BY MS. SUMNER:</p> <p>15 Q. I'd like to show you what's</p> <p>16 been marked as Brown Exhibit 9.</p> <p>17 A. I'm sorry, I just don't</p> <p>18 remember all the details of what happened 12</p> <p>19 years ago.</p> <p>20 Q. Ms. Brown, is this a letter</p> <p>21 that you received?</p> <p>22 A. I assume so. I don't know who</p> <p>23 the others are, though. I don't know.</p> <p>24 MR. GREEN: This is not an FMI</p> <p>25 document.</p>	<p style="text-align: right;">149</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 "Dear Karen & Others: ...("UEP) Animal</p> <p>3 Welfare Committee and Board have addressed</p> <p>4 FMI's Discussion Points, as identified at our</p> <p>5 last meeting in a proactive, responsible and</p> <p>6 aggressive way?"</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Do you have an understanding as</p> <p>10 to what FMI's discussion points the authors</p> <p>11 of this letter were refers to?</p> <p>12 A. Not exactly.</p> <p>13 Q. Do you generally?</p> <p>14 A. Not exactly, I don't.</p> <p>15 Q. Were those gaps that were</p> <p>16 identified by FMI in the UEP guidelines in a</p> <p>17 meeting between FMI and UEP, one of these</p> <p>18 meetings we've been talking about?</p> <p>19 A. I am sure we shared them. I'm</p> <p>20 sure that we shared have been. But I do not</p> <p>21 specifically know, I can't give you the</p> <p>22 specifics of what the last meeting was that's</p> <p>23 referred to here or what was discussed in</p> <p>24 that last meeting because I do not recall.</p> <p>25 Q. Do you recall -- you do recall,</p>

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<p style="text-align: right;">150</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 though, discussing the ten-year phase-in in</p> <p>3 your meetings with UEP. Correct?</p> <p>4 A. Discussing to the point of</p> <p>5 saying this is what they said.</p> <p>6 Q. And the next sentence in this</p> <p>7 letter reads, "Phase-in: a 'Fast Track'</p> <p>8 revised implementation program reduces the</p> <p>9 originally Proposed Phase-in by approximately</p> <p>10 50%."</p> <p>11 A. Okay.</p> <p>12 Q. Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. And does that refresh your</p> <p>15 recollection as to whether UEP agreed to</p> <p>16 speed up the phase-in in response to FMI's</p> <p>17 comments?</p> <p>18 A. That's what it says.</p> <p>19 Q. Going back to what was marked</p> <p>20 as Brown-8, and this is -- we were looking at</p> <p>21 the minutes from June 6, 2001, expert panel</p> <p>22 conference call.</p> <p>23 A. Yes.</p> <p>24 Q. It says this bullet point I</p> <p>25 want to go back to, "Recommendation is for</p>	<p style="text-align: right;">152</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 their guidelines and it would take ten years.</p> <p>3 The experts said we think that should be</p> <p>4 shortened.</p> <p>5 Q. Do you have a recollection of a</p> <p>6 discussion about whether there should be a</p> <p>7 range 67 to 72 square inches versus a minimum</p> <p>8 of 72?</p> <p>9 A. I don't recall a discussion.</p> <p>10 Q. And looking back just at your</p> <p>11 flip chart notes on July 9, 2001, which are</p> <p>12 also contained in Exhibit 8, they're the</p> <p>13 second page of the document, FMI-1100.</p> <p>14 A. Okay.</p> <p>15 Q. Under "EGG LAYING HEN ISSUES,"</p> <p>16 the first one, Space - a range or 72 inches</p> <p>17 minimum.</p> <p>18 A. Yes.</p> <p>19 Q. Does that refresh your</p> <p>20 recollection?</p> <p>21 A. If I wrote it down, they said</p> <p>22 it.</p> <p>23 Q. So the expert advisory panel</p> <p>24 recommended the 72 inch minimum?</p> <p>25 A. No, I think maybe they could</p>
<p style="text-align: right;">151</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 minimum 72 square inches of floor space." On</p> <p>3 page 3. The Bates number at the bottom is</p> <p>4 1104. This is page 3 of the minutes you took</p> <p>5 of the June 2nd conference call.</p> <p>6 A. The summary, yeah.</p> <p>7 Q. June 6th.</p> <p>8 A. There's a difference between a</p> <p>9 summary and minutes.</p> <p>10 Q. The summary of the June</p> <p>11 conference call. You see the first bullet</p> <p>12 point says, "Recommendation is for minimum</p> <p>13 72 inches of floor space"?</p> <p>14 A. Right. We've already talked</p> <p>15 about this.</p> <p>16 Q. Well, we talked about the</p> <p>17 phase-in. What I want to ask you</p> <p>18 specifically is whether it was the</p> <p>19 recommendation of the FMI advisory panel that</p> <p>20 a minimum 72 inches of floor space be</p> <p>21 allotted for egg laying hens?</p> <p>22 A. I don't recall that, that they</p> <p>23 specifically recommended that. I think what</p> <p>24 they were looking at is the fact that UEP</p> <p>25 said this was going to be their minimum in</p>	<p style="text-align: right;">153</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 have been parroting what was in the guideline</p> <p>3 document. I don't know. I don't have the</p> <p>4 document. I don't know. I have no clue.</p> <p>5 Q. Do you recall what was PETA's</p> <p>6 position on cage space?</p> <p>7 A. Specifically, no. Keep in</p> <p>8 mind, PETA was broccoli in the meat case.</p> <p>9 Q. Let's turn -- stay with</p> <p>10 Exhibit 8 there. And following the</p> <p>11 conference call summary, I'd like to focus</p> <p>12 your attention on the remainder of this</p> <p>13 document which appears to be a letter from</p> <p>14 PETA to you bearing Bates numbers 1106</p> <p>15 through 1110. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recognize this document</p> <p>18 as a letter that you received from Sean</p> <p>19 Gifford of PETA on or about August 2, 2001,</p> <p>20 in your role of senior vice president at FMI?</p> <p>21 A. In my role as senior vice</p> <p>22 president at FMI I received numerous</p> <p>23 communications from PETA written and from</p> <p>24 different people within PETA. So in that</p> <p>25 context I recognize it. But do I recall or</p>

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<p style="text-align: right;">154</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 remember what's in this, no.</p> <p>3 Q. I'm just asking you, this is a</p> <p>4 letter that you received from Sean Gifford of</p> <p>5 PETA. Correct?</p> <p>6 A. Probably.</p> <p>7 Q. On the first page of this</p> <p>8 letter --</p> <p>9 A. Yes.</p> <p>10 Q. -- Mr. Gifford wrote to you in</p> <p>11 the one, two, three, fourth paragraph.</p> <p>12 A. You skipped over where he</p> <p>13 thanks us for clarifying our plans.</p> <p>14 Q. The last sentence of that</p> <p>15 fourth paragraph, I just want to focus there,</p> <p>16 he says, "For the FMI to offer its members</p> <p>17 meaningful advice on animal welfare, it must</p> <p>18 leave the current industry standards behind</p> <p>19 and meet or exceed McDonald's and Burger</p> <p>20 King's new standards, which include the</p> <p>21 following."</p> <p>22 A. And herein lies the problem for</p> <p>23 the producer. We have two companies listed</p> <p>24 in this letter, if indeed it's accurate, who</p> <p>25 have new standards that are completely</p>	<p style="text-align: right;">156</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Do you see that?</p> <p>3 A. I see that.</p> <p>4 Q. Was that indeed PETA's position</p> <p>5 on cage space requirement at this time?</p> <p>6 MR. RANDALL: Objection to form.</p> <p>7 THE WITNESS: It certainly is in</p> <p>8 their letter. I can't -- you know --</p> <p>9 BY MS. SUMNER:</p> <p>10 Q. Let me rephrase the question.</p> <p>11 A. -- I can't document that that</p> <p>12 was their position because their position was</p> <p>13 a moving target.</p> <p>14 Q. Fair enough. Let me just</p> <p>15 rephrase the question to make it easier.</p> <p>16 Was that the position that was</p> <p>17 communicated by PETA to you at this time as</p> <p>18 to PETA's --</p> <p>19 A. Within this letter.</p> <p>20 Q. Yes.</p> <p>21 A. It's in this letter.</p> <p>22 Q. So that was the 75 --</p> <p>23 A. Yes, it is in this letter.</p> <p>24 Q. And my -- yes, my question is,</p> <p>25 that was the position that PETA communicated</p>
<p style="text-align: right;">155</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 different and telling the producer that if</p> <p>3 they don't follow these standards, they're</p> <p>4 not going to buy the product anymore. This</p> <p>5 is Burger King and McDonald's.</p> <p>6 Q. Right.</p> <p>7 A. So therein lies the problem</p> <p>8 that the supermarket industry didn't want to</p> <p>9 have anything to do with.</p> <p>10 Q. That's the competitive issue</p> <p>11 they were concerned about?</p> <p>12 A. They didn't want to have</p> <p>13 anything to do with that kind of an issue.</p> <p>14 Q. So then flip to -- so then he</p> <p>15 includes a list of standards that he is</p> <p>16 requiring or saying that FMI must meet or</p> <p>17 exceed?</p> <p>18 A. Right. Quite a list.</p> <p>19 Q. I just want to focus you on</p> <p>20 number 2, which is on the next page of this</p> <p>21 letter. It reads, "Cease buying eggs from</p> <p>22 suppliers that give hens less than 75 square</p> <p>23 inches of space per bird with the ultimate</p> <p>24 goal of phasing out battery cages</p> <p>25 altogether."</p>	<p style="text-align: right;">157</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 to you at this time?</p> <p>3 MR. WILDERS: Asked and</p> <p>4 answered.</p> <p>5 THE WITNESS: PETA -- in this</p> <p>6 letter, PETA says that they want</p> <p>7 everybody buying eggs to cease buying</p> <p>8 them from suppliers that give hens</p> <p>9 less than 75 square inches of space.</p> <p>10 At the time they wrote this letter,</p> <p>11 that was the position that whoever</p> <p>12 signed it, because it was always</p> <p>13 somebody different, Sean Gifford</p> <p>14 signed it --</p> <p>15 BY MS. SUMNER:</p> <p>16 Q. And that's more space than was</p> <p>17 required by the UEP guidelines at this time.</p> <p>18 Correct?</p> <p>19 A. I don't know that. But if you</p> <p>20 say so, yes.</p> <p>21 Q. Well, we had just seen a</p> <p>22 document that talked about 72 square inches.</p> <p>23 A. I don't see -- I don't have a</p> <p>24 copy of the UEP guidelines of 2001, so I</p> <p>25 can't speak to that.</p>

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<p style="text-align: right;">158</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. What was the position -- what</p> <p>3 was PETA's position on how quickly egg</p> <p>4 producers should phase in the cage space</p> <p>5 guidelines?</p> <p>6 A. I haven't a clue unless I read</p> <p>7 it and it's in this letter.</p> <p>8 - - -</p> <p>9 (Exhibit Brown-10, 8/16/02 Fax,</p> <p>10 Bates FMI-001066 - FMI-001077, was</p> <p>11 marked for identification.)</p> <p>12 - - -</p> <p>13 BY MS. SUMNER:</p> <p>14 Q. I'm going to show you a</p> <p>15 document that's been marked as Brown</p> <p>16 Exhibit 10.</p> <p>17 A. It's another letter from PETA.</p> <p>18 Have you noticed that the executives in the</p> <p>19 member companies are changing all the time as</p> <p>20 to who gets to read it?</p> <p>21 Q. This is a document that bears</p> <p>22 the Bates numbers FMI-1066 through 1077.</p> <p>23 A. Yes.</p> <p>24 Q. It's dated August 16, 2002?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">160</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 interested in this issue or who were involved</p> <p>3 or who were happy that we were doing what we</p> <p>4 were doing. But our smaller companies and</p> <p>5 our one store operators, they had no one to</p> <p>6 devote to this kind of activity. So thank</p> <p>7 heavens that we have companies within trade</p> <p>8 associations who have members within their</p> <p>9 companies, executives within their companies</p> <p>10 who can devote time to these kinds of issues</p> <p>11 and work with the trade association on it.</p> <p>12 Otherwise, who knows what trade associations</p> <p>13 will be doing. So I just wanted to point</p> <p>14 that out. It does not mean that these were</p> <p>15 the only companies that were involved in this</p> <p>16 issue or cared about it.</p> <p>17 Q. That clarification is helpful,</p> <p>18 thank you.</p> <p>19 I'd like to direct you to the</p> <p>20 PETA letter contained in this fax that you</p> <p>21 sent. It begins on FMI-1070 and runs through</p> <p>22 1077.</p> <p>23 A. 1070. They wrote really long</p> <p>24 letters.</p> <p>25 Q. They sure did.</p>
<p style="text-align: right;">159</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. It appears to be from you, a</p> <p>3 fax from you to a series of people regarding</p> <p>4 animal welfare update.</p> <p>5 Do you recognize this document,</p> <p>6 Ms. Brown?</p> <p>7 A. I don't remember the document,</p> <p>8 but I see that it's a document from me to --</p> <p>9 faxed to member companies on FMI letterhead.</p> <p>10 Q. Is this a fax that you sent on</p> <p>11 or about August 16, 2002, to the individuals</p> <p>12 listed in the fax to column?</p> <p>13 A. I presume so.</p> <p>14 Q. And who are those individuals?</p> <p>15 A. Executives in FMI member</p> <p>16 companies.</p> <p>17 Q. I'd like to direct your</p> <p>18 attention --</p> <p>19 A. Let me point something out,</p> <p>20 because I want to make sure it's clear. I</p> <p>21 don't want to have a misunderstanding.</p> <p>22 These larger companies were the</p> <p>23 ones that had staff to focus on issues</p> <p>24 management. It wasn't that these were the</p> <p>25 only companies in our membership that were</p>	<p style="text-align: right;">161</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Was this a letter that you</p> <p>3 received in your role as senior vice</p> <p>4 president at FMI on or about August 7, 2002,</p> <p>5 from Bruce Friedrich at PETA?</p> <p>6 A. I presume so.</p> <p>7 Q. I'd like to direct your</p> <p>8 attention to page 3 of the letter, under the</p> <p>9 "Laying Hens" section.</p> <p>10 A. 72?</p> <p>11 Q. 72. It says, "Laying Hens,"</p> <p>12 about two-thirds of the way down the page.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And about two-thirds of the way</p> <p>16 down that paragraph, there's a bold phased</p> <p>17 sentence that reads, "For these guidelines,</p> <p>18 PETA expects a phase-in period for FMI/NCCR</p> <p>19 members of a maximum 18 months."</p> <p>20 Did I read that correctly?</p> <p>21 A. I think so. Good job.</p> <p>22 Q. Was this the position on</p> <p>23 phase-in that PETA communicated to FMI in</p> <p>24 August of 2002?</p> <p>25 A. It's in this letter.</p>

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<p style="text-align: right;">162</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Was this the position on</p> <p>3 phase-in that PETA communicated to FMI in</p> <p>4 August of 2002?</p> <p>5 A. It's in this letter.</p> <p>6 Q. And that is a faster phase-in</p> <p>7 than what was proposed by UEP. Correct?</p> <p>8 A. They were reducing it by</p> <p>9 50 percent which would have taken the ten</p> <p>10 years to five, so 18 months would be --</p> <p>11 Q. Even quicker. Right?</p> <p>12 A. But, again, keep in mind,</p> <p>13 PETA's objective is not having any chickens,</p> <p>14 any cows, any pigs, any ducks ever processed</p> <p>15 for food to be eaten by any human on the</p> <p>16 planet. So anything that they proposed,</p> <p>17 which was always a moving target, was going</p> <p>18 to be almost impossible to achieve because</p> <p>19 that's their agenda.</p> <p>20 Q. So they wanted it to be done</p> <p>21 tomorrow?</p> <p>22 A. They're all vegans. Very</p> <p>23 irritable all the time, too.</p> <p>24 Q. Let's go back to your</p> <p>25 presentation again that you gave to OIE.</p>	<p style="text-align: right;">164</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 not descriptive minutes in the traditional</p> <p>3 context.</p> <p>4 Q. But you kept meeting summaries?</p> <p>5 A. Yes. Mostly. Maybe not</p> <p>6 always, but I would assume mostly.</p> <p>7 Q. Ms. Brown, I'm going to go show</p> <p>8 you -- mark five documents right now.</p> <p>9 A. I'm sorry, what did you say?</p> <p>10 Q. I'm going to mark five</p> <p>11 documents right now and just ask you a</p> <p>12 question about all of them together, just</p> <p>13 general question to hopefully identify them</p> <p>14 quickly.</p> <p>15 A. Speed reading.</p> <p>16 Q. The first one is -- give those</p> <p>17 back to me, they're not in order.</p> <p>18 So first one is -- bears the</p> <p>19 Bates numbers FMI-680 through 83.</p> <p>20 MS. ANDERSON: You want to wait</p> <p>21 until counsel has all of them,</p> <p>22 otherwise we'll ask you to repeat the</p> <p>23 Bates number.</p> <p>24 MS. SUMNER: That's been marked</p> <p>25 as Brown Exhibit 7 (sic, Exhibit 11).</p>
<p style="text-align: right;">163</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. I'm not lecturing you, I'm just</p> <p>3 trying to help you understand the context of</p> <p>4 what we're talking about from a retail</p> <p>5 perspective.</p> <p>6 Q. I want to direct your attention</p> <p>7 now to page 3065. It's a slide entitled,</p> <p>8 "Experts' Meetings To-Date."</p> <p>9 A. Okay.</p> <p>10 Q. Is this a list of all of the</p> <p>11 meetings of the animal welfare expert panel</p> <p>12 as of the date of this presentation?</p> <p>13 A. Yes.</p> <p>14 Q. I believe you testified before</p> <p>15 that you kept summaries of these meetings?</p> <p>16 A. Flip chart notes.</p> <p>17 Q. Well, do you recall the --</p> <p>18 A. I did not keep word-by-word</p> <p>19 summaries of meetings. I mean, there were</p> <p>20 conversations all over the place by the</p> <p>21 scientists. And the important thing coming</p> <p>22 out of the meetings were what were the</p> <p>23 actions that they were recommending or what</p> <p>24 were their recommendation. So they were</p> <p>25 meeting summaries kept on flip chart notes,</p>	<p style="text-align: right;">165</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 I want to mark as Brown Exhibit 12 --</p> <p>3 THE WITNESS: This is a</p> <p>4 duplicate document right here.</p> <p>5 MS. SUMNER: I want to mark as</p> <p>6 Exhibit 12 a document that bears the</p> <p>7 Bates numbers FMI-296 through 305.</p> <p>8 We'll mark as Brown-13, a</p> <p>9 document that bears the Bates numbers</p> <p>10 FMI-2809 through 13.</p> <p>11 MR. RANDALL: When you said 7</p> <p>12 there, did you mean 11?</p> <p>13 THE WITNESS: I've got 11, 12</p> <p>14 and 13. That's the stickies I'm</p> <p>15 looking at.</p> <p>16 MS. SUMNER: I'm going to mark</p> <p>17 as Brown-14, a document that bears the</p> <p>18 Bates numbers FMI-3402 through 07.</p> <p>19 And as Brown-15, a document that bears</p> <p>20 the Bates numbers FMI-3389 through 92.</p> <p>21 THE WITNESS: Okay.</p> <p>22 - - -</p> <p>23 (Exhibits Brown-11, Animal</p> <p>24 Welfare Conference Call Wednesday,</p> <p>25 June 6, 2001, Bates FMI-000680 -</p>

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<p style="text-align: right;">166</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 FMI-000683; Brown-12, Animal Welfare</p> <p>3 Meeting San Diego, CA February 10-12,</p> <p>4 2003, Bates FMI-000296 - FMI-000305;</p> <p>5 Brown-13, FMI-NCCR Animal Welfare</p> <p>6 Advisors Meeting May 13-14, 2003,</p> <p>7 Bates FMI-002809 - FMI-002813;</p> <p>8 Brown-14, Animal Welfare Advisory</p> <p>9 Committee Meeting Arlington, VA May</p> <p>10 22-24, 2007, Bates FMI-003402 -</p> <p>11 FMI-003407; and Brown-15, Meeting</p> <p>12 Summary FMI-NCCR Animal Welfare</p> <p>13 Advisory Committee November 17-19,</p> <p>14 2008, Bates FMI-003389 - FMI-003392,</p> <p>15 were marked for identification.)</p> <p>16 - - -</p> <p>17 BY MS. SUMNER:</p> <p>18 Q. Ms. Brown, my first question to</p> <p>19 you is, is each of the documents that have</p> <p>20 just been marked as exhibits, Brown Exhibits</p> <p>21 11 through 15, a summary, flip chart notes</p> <p>22 summary of an animal welfare expert review</p> <p>23 panel meeting that was prepared by you?</p> <p>24 A. That's what they look like.</p> <p>25 Q. And were these summaries</p>	<p style="text-align: right;">168</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. I'd like to direct your</p> <p>3 attention to --</p> <p>4 A. Which page?</p> <p>5 Q. -- 3061, we're back on the</p> <p>6 FMI-NCCR Collaboration.</p> <p>7 A. Okay.</p> <p>8 Q. And we talked before about the</p> <p>9 last bullet point, "FMI and NCCR undertake</p> <p>10 one-on-one meetings with producer community</p> <p>11 to give feedback on how to enhance current</p> <p>12 industry guidelines."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And I believe you testified</p> <p>16 before that you had such a series of meetings</p> <p>17 with UEP. Is that correct?</p> <p>18 A. Yes. How many, I don't</p> <p>19 remember.</p> <p>20 Q. Do you recall a meeting in</p> <p>21 mid-December 2001 with the UEP to discuss</p> <p>22 these gaps?</p> <p>23 A. Not specifically.</p> <p>24 Q. I'm going to show you a</p> <p>25 document that I'm going to mark as Brown-16.</p>
<p style="text-align: right;">167</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 created at or around the time of the meeting</p> <p>3 identified at the top of the summary?</p> <p>4 A. Yes.</p> <p>5 Q. Did you attend each of these</p> <p>6 meetings for which you created summaries?</p> <p>7 A. Yes, as is stated on here.</p> <p>8 Q. And was it your practice to</p> <p>9 record accurately in these summaries what</p> <p>10 occurred at the meetings?</p> <p>11 A. I recorded conclusions,</p> <p>12 accurate conclusions, accurate</p> <p>13 recommendations, on flip charts.</p> <p>14 Q. And did you attend these</p> <p>15 meetings as a senior vice president of FMI?</p> <p>16 A. Yes.</p> <p>17 Q. And were these meetings</p> <p>18 maintained as part of the regular business of</p> <p>19 FMI?</p> <p>20 A. Yes.</p> <p>21 Q. Let's turn back to your</p> <p>22 presentation which we're moving through here.</p> <p>23 This is Brown-3.</p> <p>24 A. Never thought I would get so</p> <p>25 much attention.</p>	<p style="text-align: right;">169</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 (Exhibit Brown-16, Summary of</p> <p>4 Meeting with FMI - December 13, 2001,</p> <p>5 Bates MPS-00047338, was marked for</p> <p>6 identification.)</p> <p>7 - - -</p> <p>8 BY MS. SUMNER:</p> <p>9 Q. This is a document bearing the</p> <p>10 Bates numbers MPS-00047338.</p> <p>11 MR. WILDERS: Counsel, are you</p> <p>12 going to lay a foundation for the</p> <p>13 protective order?</p> <p>14 BY MS. SUMNER:</p> <p>15 Q. My question for you, Ms. Brown,</p> <p>16 is, if you could take a moment to look at the</p> <p>17 document which is entitled, "Summary of</p> <p>18 Meeting with FMI - December 13, 2001," it</p> <p>19 identifies you as one of the attendees.</p> <p>20 My question is, does reviewing</p> <p>21 this document refresh your recollection as to</p> <p>22 a meeting that occurred on December 13, 2001,</p> <p>23 between FMI and various representatives of</p> <p>24 UEP?</p> <p>25 MR. WILDERS: I object that this</p>

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<p style="text-align: right;">170</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 document is marked confidential.</p> <p>3 MS. SUMNER: Your objection is</p> <p>4 duly noted for the record. Midwest</p> <p>5 has --</p> <p>6 MR. PATTON: Don't interrupt.</p> <p>7 MS. SUMNER: Midwest has waived</p> <p>8 their confidentiality over it.</p> <p>9 MR. PATTON: Let him make his</p> <p>10 objection.</p> <p>11 MS. SUMNER: We covered this --</p> <p>12 MR. WILDERS: They did not waive</p> <p>13 this.</p> <p>14 MR. DAVIS: They waived it in</p> <p>15 writing.</p> <p>16 MS. SUMNER: They waived it in</p> <p>17 writing.</p> <p>18 MR. DAVIS: Your objection is</p> <p>19 noted.</p> <p>20 MS. SUMNER: And we're entitled</p> <p>21 to use it. It's our risk of</p> <p>22 violating. So, again, I don't think</p> <p>23 we need to take up time on this. They</p> <p>24 waived their -- the confidentiality.</p> <p>25 MR. BURKE: This is Jason Burke</p>	<p style="text-align: right;">172</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 to the second item that's listed here.</p> <p>3 A. Yes.</p> <p>4 Q. Which reads, "Terrie Dort</p> <p>5 recommended UEP develop a space phase-in</p> <p>6 program for brown laying hens."</p> <p>7 Do you recall a discussion with</p> <p>8 UEP at or around December 13, 2001, where</p> <p>9 Terrie Dort recommended that UEP develop a</p> <p>10 phase-in program for brown laying hens?</p> <p>11 A. Not specifically, no.</p> <p>12 Q. Do you recall it generally?</p> <p>13 A. No.</p> <p>14 Q. Do you recall anything about</p> <p>15 that conversation?</p> <p>16 A. No. Sorry.</p> <p>17 Q. That's okay.</p> <p>18 A. I can't even get a picture of</p> <p>19 what room it would have been in, so...</p> <p>20 Q. Let's look at item number 3</p> <p>21 which says, "Karen Brown - an audit form</p> <p>22 needs to be quantifiable."</p> <p>23 A. That would be a general</p> <p>24 statement I would make in any meeting that</p> <p>25 was held where somebody would have been, I</p>
<p style="text-align: right;">171</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 on behalf of Midwest. We have indeed</p> <p>3 waived our confidentiality right as to</p> <p>4 this document with this particular</p> <p>5 witness.</p> <p>6 THE WITNESS: Aren't I lucky.</p> <p>7 BY MS. SUMNER:</p> <p>8 Q. So, again, Ms. Brown, the</p> <p>9 question is, after reviewing the document,</p> <p>10 does it refresh your recollection as to a</p> <p>11 meeting with UEP on December 13, 2001?</p> <p>12 A. The specifics of the meeting,</p> <p>13 no.</p> <p>14 Q. Does it refresh your</p> <p>15 recollection generally about the meeting?</p> <p>16 A. No. This is -- I don't think I</p> <p>17 made this document.</p> <p>18 Q. You did not create this</p> <p>19 document.</p> <p>20 A. Okay. Because I have no --</p> <p>21 Q. So I don't want there to be any</p> <p>22 confusion about that.</p> <p>23 A. I wouldn't want a document that</p> <p>24 was not really identifiable.</p> <p>25 Q. I want to direct your attention</p>	<p style="text-align: right;">173</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 don't know whether they were talking about --</p> <p>3 I mean, I don't recall the meeting, but if</p> <p>4 there was a conversation about an audit form,</p> <p>5 one of the things that our experts said is</p> <p>6 they have to be quantifiable. So I could</p> <p>7 have made that statement. But I don't recall</p> <p>8 specifically.</p> <p>9 Q. What do you mean by</p> <p>10 "quantifiable"?</p> <p>11 A. You have to have metrics.</p> <p>12 Measurable metrics in any kind of audit, be</p> <p>13 it an environmental audit, food safety audit,</p> <p>14 animal welfare audit, you have to have</p> <p>15 measurable metrics, things you can count or</p> <p>16 easily identify.</p> <p>17 Q. What's the purpose of an audit?</p> <p>18 A. The purpose of an audit, as far</p> <p>19 as I understand it, is to make sure people</p> <p>20 are doing what they said they were doing to</p> <p>21 do.</p> <p>22 Q. Did FMI believe that an audit</p> <p>23 component should be part of its animal</p> <p>24 welfare program?</p> <p>25 MR. WILDERS: Objection. Vague.</p>

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<p style="text-align: right;">174</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: There was</p> <p>3 discussion about an audit being part</p> <p>4 of any animal welfare program, and</p> <p>5 certainly from the standpoint of being</p> <p>6 able to confirm that people were doing</p> <p>7 what they said they were doing, an</p> <p>8 audit is definitely a good way to do</p> <p>9 that. There was some conversation</p> <p>10 about, I'm sure you'll get to the</p> <p>11 whole list, maybe you won't, but, yes,</p> <p>12 we did believe that an audit would be</p> <p>13 helpful in the process of confirming.</p> <p>14 But we were talking third-party</p> <p>15 audits, independent third-party audits</p> <p>16 that would be done by some third party</p> <p>17 that would confirm that companies were</p> <p>18 following the guidelines they said</p> <p>19 they were following.</p> <p>20 BY MS. SUMNER:</p> <p>21 Q. That was something that FMI</p> <p>22 included as part of its animal welfare</p> <p>23 program?</p> <p>24 MR. WILDERS: Objection.</p> <p>25 Misstates the testimony.</p>	<p style="text-align: right;">176</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 (Exhibit Brown-17, 1/21/02</p> <p>4 Letter, Bates FMI-000899 - FMI-000904,</p> <p>5 was marked for identification.)</p> <p>6 - - -</p> <p>7 BY MS. SUMNER:</p> <p>8 Q. I'd like to show you what's</p> <p>9 being marked as Brown Exhibit 17. This is a</p> <p>10 document that bears the Bates numbers FMI-899</p> <p>11 through 904.</p> <p>12 Ms. Brown, is this a letter</p> <p>13 that you received from Al Pope on or about</p> <p>14 January 21, 2002, in your capacity as senior</p> <p>15 vice president of FMI?</p> <p>16 A. I assume so.</p> <p>17 Q. What did you understand -- why</p> <p>18 did you understand Al to be writing to you at</p> <p>19 this time?</p> <p>20 A. As it states in the letter, he</p> <p>21 was sharing results of their board meeting.</p> <p>22 Q. Results pertaining to what?</p> <p>23 A. I'll read it and tell you.</p> <p>24 Q. Is this relating to the Animal</p> <p>25 Welfare Guidelines?</p>
<p style="text-align: right;">175</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MS. SUMNER: It's a question.</p> <p>3 It's not intended to be a statement of</p> <p>4 testimony.</p> <p>5 THE WITNESS: That was</p> <p>6 something that --</p> <p>7 MR. WILDERS: Object to leading.</p> <p>8 THE WITNESS: -- was discussed</p> <p>9 down the road, but never got off the</p> <p>10 ground.</p> <p>11 BY MS. SUMNER:</p> <p>12 Q. What do you mean by "never got</p> <p>13 off the ground"?</p> <p>14 A. It never got implemented.</p> <p>15 Q. Why is that?</p> <p>16 A. There was an attempt to</p> <p>17 implement. Because -- there were a couple of</p> <p>18 reasons. Producers refused to have a</p> <p>19 third-party audit. They wanted to audit</p> <p>20 themselves. We didn't believe that was a</p> <p>21 credible approach. That was one problem. We</p> <p>22 didn't have the resources, FMI didn't put any</p> <p>23 resources, very few resources into an audit</p> <p>24 program. That was not what we saw was our</p> <p>25 primary role in this process.</p>	<p style="text-align: right;">177</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. I want to focus your attention</p> <p>4 on the page that bears the Bates number 903</p> <p>5 of this document.</p> <p>6 A. Okay. Can I look at the page</p> <p>7 before it so I have an idea what the document</p> <p>8 is?</p> <p>9 Q. Sure.</p> <p>10 A. This is all still Al's stuff.</p> <p>11 Right? Okay.</p> <p>12 Q. Actually you can just focus on</p> <p>13 the first page.</p> <p>14 A. Which page?</p> <p>15 Q. You said you wanted to look at</p> <p>16 the first page of the document, 902.</p> <p>17 A. I'd like to back up on the</p> <p>18 document because you -- the page looked like</p> <p>19 it was in the middle of something.</p> <p>20 Q. We can focus on the first page.</p> <p>21 I just want to focus your attention --</p> <p>22 A. Is that 902?</p> <p>23 Q. 902. On the boldface sentence</p> <p>24 there.</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">178</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Where UEP wrote, "Based upon</p> <p>3 existing equipment and existing density,</p> <p>4 meeting the Scientific Committee's target</p> <p>5 could reduce house capacity and the U.S. Egg</p> <p>6 Supply by a minimum of 12 to as much as 44%."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. So as of this time, UEP</p> <p>10 informed FMI that meeting the guidelines</p> <p>11 could have a significant impact on U.S. egg</p> <p>12 supply. Correct?</p> <p>13 A. It says what it means, it means</p> <p>14 what it says, I suppose.</p> <p>15 Q. And is that something that FMI</p> <p>16 shared with its members?</p> <p>17 A. I don't know the answer to that</p> <p>18 question. FMI was always very careful about</p> <p>19 sharing anything that would imply -- that</p> <p>20 would even have a hint of any kind of</p> <p>21 involvement in directing the marketplace.</p> <p>22 We -- FMI's staff, we were always very highly</p> <p>23 skeptical of numbers like that.</p> <p>24 Q. And why is that?</p> <p>25 A. We just had a healthy degree of</p>	<p style="text-align: right;">180</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 I don't know. I don't recall anything</p> <p>3 like that.</p> <p>4 BY MS. SUMNER:</p> <p>5 Q. Did you tell your members that</p> <p>6 UEP had raised with you that there could be a</p> <p>7 negative impact of supply --</p> <p>8 A. I do not --</p> <p>9 Q. -- on implementing these</p> <p>10 guidelines?</p> <p>11 MR. PATTON: Object to the form.</p> <p>12 MR. WILDERS: Asked and</p> <p>13 answered.</p> <p>14 THE WITNESS: I do not recall.</p> <p>15 BY MS. SUMNER:</p> <p>16 Q. You don't recall?</p> <p>17 A. I do not recall.</p> <p>18 Q. You did testify before that</p> <p>19 avoiding market disruption was something that</p> <p>20 was important to your members as your members</p> <p>21 considered animal welfare programs. Correct?</p> <p>22 A. They certainly don't want to</p> <p>23 end up with not having products that our</p> <p>24 customers want. But in other words,</p> <p>25 consumers want eggs. So they certainly</p>
<p style="text-align: right;">179</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 skepticism about some of the things that the</p> <p>3 industry's, you know, suppliers were saying</p> <p>4 because they didn't always prove out to be</p> <p>5 actual fact.</p> <p>6 Q. In your normal practice --</p> <p>7 A. So we had skepticism.</p> <p>8 Q. In your normal practice at FMI,</p> <p>9 is this the sort of information that you</p> <p>10 would have passed on to your members?</p> <p>11 A. Probably not.</p> <p>12 Q. Why not?</p> <p>13 MR. WILDERS: Asked and</p> <p>14 answered.</p> <p>15 THE WITNESS: I don't have any</p> <p>16 idea, I don't have any knowledge that</p> <p>17 it was passed on. And it's not</p> <p>18 something that I would have passed on</p> <p>19 myself. We might have said that there</p> <p>20 was a concern within the producer</p> <p>21 industry that there could be some</p> <p>22 impact, negative impact on supply, but</p> <p>23 we never would have said anything</p> <p>24 about specific numbers that I am aware</p> <p>25 of. Now, if somebody else shared it,</p>	<p style="text-align: right;">181</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 wouldn't want -- they would be concerned</p> <p>3 about any marketplace disruption. A disease</p> <p>4 wipes out all the laying hens. A tornado</p> <p>5 that takes out the largest supplier's egg</p> <p>6 laying operation. A salmonella recall, of</p> <p>7 which there had been several. So, yeah, we</p> <p>8 would be concerned about any kind of</p> <p>9 marketplace disruption that is going to</p> <p>10 impact the ability of our consumers to buy</p> <p>11 the products that they want to buy.</p> <p>12 Q. And a 12 to 44 percent decrease</p> <p>13 in the U.S. supply of eggs would be a</p> <p>14 significant market disruption, wouldn't it?</p> <p>15 MR. WILDERS: Objection. Call</p> <p>16 for speculation of testimony.</p> <p>17 MR. RANDALL: Objection.</p> <p>18 THE WITNESS: I am not an</p> <p>19 antitrust attorney. You are. So I'm</p> <p>20 not -- you know, I don't recall any</p> <p>21 conversation that was shared with our</p> <p>22 members about that. I am not aware of</p> <p>23 it. If it happened and you can flip</p> <p>24 something out and show me that, you</p> <p>25 know, it was, but I do not recall it.</p>

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<p style="text-align: right;">182</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 These are very tricky issues and they</p> <p>3 are the kinds of issues that we stayed</p> <p>4 away from very carefully. We didn't</p> <p>5 talk about supplies. We didn't talk</p> <p>6 about prices. We didn't allow our</p> <p>7 members to have any of those</p> <p>8 conversations when they were together.</p> <p>9 People like our counsel would jump up</p> <p>10 and start waiving, you know, flags at</p> <p>11 the back of the room. So I don't</p> <p>12 know. I don't know. I'm not sure</p> <p>13 where you're going with this. I'm</p> <p>14 very uncomfortable with it. So I</p> <p>15 would like you to be a little bit more</p> <p>16 transparent.</p> <p>17 BY MS. SUMNER:</p> <p>18 Q. I do not mean to be</p> <p>19 nontransparent. I'm just asking you a simple</p> <p>20 question, which is --</p> <p>21 A. And the answer is I don't</p> <p>22 recall, if you're going to repeat the</p> <p>23 question.</p> <p>24 Q. Well, I don't think that that's</p> <p>25 responsive to the question. The question</p>	<p style="text-align: right;">184</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 to get married, not today, but I just want to</p> <p>3 check and see if there's something I have --</p> <p>4 MS. SUMNER: Can we go off the</p> <p>5 record, please?</p> <p>6 VIDEOGRAPHER: Off the record at</p> <p>7 2:06.</p> <p>8 - - -</p> <p>9 (A recess was taken.)</p> <p>10 - - -</p> <p>11 VIDEOGRAPHER: Back on the</p> <p>12 record at 2:07.</p> <p>13 BY MS. SUMNER:</p> <p>14 Q. Ms. Brown, if you could just</p> <p>15 reorient yourself to Brown Exhibit 17, this</p> <p>16 is the letter from Al Pope to you,</p> <p>17 January 21, 2002.</p> <p>18 A. Yes.</p> <p>19 Q. I want to direct your attention</p> <p>20 to the last page of that document. In this</p> <p>21 letter, Mr. Brown sent you a chart outlining</p> <p>22 the capacity changes that could be associated</p> <p>23 with a phase in of the cage space requirement</p> <p>24 of the UEP guidelines. Correct?</p> <p>25 A. That's what is here.</p>
<p style="text-align: right;">183</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 was --</p> <p>3 MR. WILDERS: Don't argue with</p> <p>4 the witness.</p> <p>5 MR. MCKENNEY: Objection to the</p> <p>6 sidebar.</p> <p>7 MR. WILDERS: It is improper to</p> <p>8 argue and badger this --</p> <p>9 MS. SUMNER: The question --</p> <p>10 MS. ANDERSON: Wait for your</p> <p>11 time.</p> <p>12 BY MS. SUMNER:</p> <p>13 Q. The question was, a 12 to</p> <p>14 44 percent decrease in the U.S. supply of</p> <p>15 eggs would be a significant market</p> <p>16 disruption?</p> <p>17 A. I have no clue if that's true</p> <p>18 or not. I have no clue, I wouldn't have had</p> <p>19 then, have no clue now whether, number one,</p> <p>20 that was an accurate statement; or number</p> <p>21 two, whether that would actually bear out. I</p> <p>22 have no clue.</p> <p>23 Q. Turn to page 904 in this</p> <p>24 document that's been marked as Brown-17.</p> <p>25 A. I have a daughter who is about</p>	<p style="text-align: right;">185</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you pass this information</p> <p>3 along to your members?</p> <p>4 A. I have no idea. It would have</p> <p>5 been more likely that we may have shared it</p> <p>6 with the experts, but I have no idea.</p> <p>7 Q. And is this information that</p> <p>8 your members would have been interested in?</p> <p>9 MR. WILDERS: Objection. Calls</p> <p>10 for speculation.</p> <p>11 THE WITNESS: I have no idea. I</p> <p>12 have no idea.</p> <p>13 MS. SUMNER: Let's take a lunch</p> <p>14 break.</p> <p>15 VIDEOGRAPHER: Off the record at</p> <p>16 2:08.</p> <p>17 - - -</p> <p>18 (A recess was taken.)</p> <p>19 - - -</p> <p>20 VIDEOGRAPHER: Here begins tape</p> <p>21 three in the videotape deposition of</p> <p>22 Karen Brown. Back on the record at</p> <p>23 2:59.</p> <p>24 BY MS. SUMNER:</p> <p>25 Q. Good afternoon, Ms. Brown,</p>

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<p style="text-align: right;">186</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 could you pull back out what we've marked as</p> <p>3 Brown Exhibit 3, your presentation from 2004.</p> <p>4 A. Okay.</p> <p>5 Q. And please turn to the page</p> <p>6 3066 that's headed "FMI-NCCR Reports."</p> <p>7 A. Okay.</p> <p>8 Q. What were FMI-NCCR reports?</p> <p>9 A. They were reports summarizing</p> <p>10 where we were. Our progress. And they were</p> <p>11 sent to both of our memberships. They were</p> <p>12 released to the media. They were put on our,</p> <p>13 each of our Web sites.</p> <p>14 Q. When you say where we are, you</p> <p>15 mean where you were with your animal welfare</p> <p>16 program efforts?</p> <p>17 A. Yes.</p> <p>18 Q. I'm going to mark -- well,</p> <p>19 there's four reports listed on the slide.</p> <p>20 Correct?</p> <p>21 A. Yes.</p> <p>22 - - -</p> <p>23 (Exhibits Brown-18, Interim</p> <p>24 Report FMI-NCCR Animal Welfare Program</p> <p>25 February 15, 2002, Bates FMI-000245 -</p>	<p style="text-align: right;">188</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. I'm just checking the dates to</p> <p>3 see if there -- because there were -- you</p> <p>4 know, I want to make sure they're consistent</p> <p>5 with the slides. Yes.</p> <p>6 Q. Did you draft these reports?</p> <p>7 A. I wrote them.</p> <p>8 Q. In drafting them, was it your</p> <p>9 intent that they be truthful and accurate?</p> <p>10 A. Yes.</p> <p>11 Q. Do the reports reflect your</p> <p>12 personal knowledge of FMI's progress on the</p> <p>13 animal welfare program?</p> <p>14 A. If you mean my professional</p> <p>15 knowledge, yes.</p> <p>16 Q. And were the reports drafted by</p> <p>17 you on or about the dates identified on the</p> <p>18 front page of each of the reports?</p> <p>19 A. Probably before that date.</p> <p>20 Q. Were they published on the date</p> <p>21 that's listed on the report?</p> <p>22 A. They would have been sent to</p> <p>23 the members initially and then maybe a day or</p> <p>24 two later sent out publicly.</p> <p>25 Q. Were they sent to all of your</p>
<p style="text-align: right;">187</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 FMI-000249, Brown-19, June 2002 Report</p> <p>3 FMI-NCCR Animal Welfare Program, Bates</p> <p>4 FMI-000015 - FMI-000022, Brown-20,</p> <p>5 January 2003 Report FMI-NCCR Animal</p> <p>6 Welfare Program, Bates FMI-000001 -</p> <p>7 FMI-000014, and Brown-21, June 2003</p> <p>8 Report, FMI-NCCR Animal Welfare</p> <p>9 Program, Bates FMI-000105 -</p> <p>10 FMI-000110, were marked for</p> <p>11 identification.)</p> <p>12 - - -</p> <p>13 BY MS. SUMNER:</p> <p>14 Q. I'm going to mark a set of</p> <p>15 exhibits right now. The first one I'm going</p> <p>16 to show you is Brown-18. It's a document</p> <p>17 bearing the Bates numbers FMI-245 through</p> <p>18 249. I'll mark as Brown-19, FMI-15 through</p> <p>19 22. As Brown-20, FMI-1 through 14. And as</p> <p>20 Brown-21, FMI-105 through 110.</p> <p>21 Ms. Brown, are the documents</p> <p>22 that I just handed you that have been marked</p> <p>23 as Exhibits 18 through 21 the reports that</p> <p>24 are referred to on your slide entitled</p> <p>25 "FMI-NCCR Reports"?</p>	<p style="text-align: right;">189</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 members?</p> <p>3 A. Through the communications</p> <p>4 system that I described, yes. Our weekly</p> <p>5 mailings.</p> <p>6 Q. Did you draft these reports as</p> <p>7 part of your regular business as senior vice</p> <p>8 president of FMI?</p> <p>9 A. Yes.</p> <p>10 Q. And were these reports kept in</p> <p>11 the ordinary course of FMI's business?</p> <p>12 A. I'm sorry, what did you say?</p> <p>13 Q. Were these reports kept in the</p> <p>14 normal course of FMI's business?</p> <p>15 A. Yes.</p> <p>16 Q. I'd like to direct your</p> <p>17 attention to the one that has been marked as</p> <p>18 Brown-19. This is the June 2002 report. Do</p> <p>19 you see that?</p> <p>20 A. Yes.</p> <p>21 Q. On the first page it reads,</p> <p>22 second paragraph, "Some recommendations</p> <p>23 contained within this report have economic</p> <p>24 implications. Some require an implementation</p> <p>25 timetable because they cannot be accomplished</p>

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<p style="text-align: right;">190</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 immediately."</p> <p>3 What economic implications were</p> <p>4 you referring to there?</p> <p>5 A. Some of the recommendations of</p> <p>6 the scientific experts would have required</p> <p>7 changes in housing or other structural</p> <p>8 changes as far as the producers were</p> <p>9 concerned and it would have had an economic</p> <p>10 impact from the standpoint of cost of</p> <p>11 changes.</p> <p>12 Q. So they would have increased</p> <p>13 the cost?</p> <p>14 A. I don't know about that.</p> <p>15 Increased the cost of what?</p> <p>16 Q. I'm sorry, you said "from the</p> <p>17 standpoint of cost of changes." You mean</p> <p>18 they would have had a cost associated with</p> <p>19 making those changes?</p> <p>20 A. Certainly if they had to get</p> <p>21 new cages, you know, new -- or housing,</p> <p>22 change housing. Those kinds of things would</p> <p>23 have incurred some cost on the part of the</p> <p>24 producer.</p> <p>25 Q. What did you mean when you</p>	<p style="text-align: right;">192</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 "THE GUIDELINES," and towards the bottom</p> <p>3 there's a heading for "Laying Hens."</p> <p>4 A. Yes.</p> <p>5 Q. I want to focus on the laying</p> <p>6 hens section. The first sentence reads, "FMI</p> <p>7 and NCCR recommended to their members the</p> <p>8 2002 guidelines of the United Egg</p> <p>9 Producers...for use with their suppliers of</p> <p>10 eggs and egg products."</p> <p>11 A. Yes.</p> <p>12 Q. Is that an accurate statement?</p> <p>13 A. We recommended them as best</p> <p>14 practices, and if they wanted to voluntarily</p> <p>15 use that individually with their suppliers,</p> <p>16 that was the intent of that sentence.</p> <p>17 Q. And at this point in time when</p> <p>18 this recommendation was made, that was</p> <p>19 following the meetings that FMI had had with</p> <p>20 UEP to identify and address the gaps that had</p> <p>21 been identified by FMI's animal welfare</p> <p>22 experts. Correct?</p> <p>23 A. Yes. But not all of the gaps</p> <p>24 had been dealt with.</p> <p>25 Q. Let's look at page 18. The</p>
<p style="text-align: right;">191</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 wrote, "Some require an implementation</p> <p>3 timetable because they cannot be accomplished</p> <p>4 immediately?"</p> <p>5 A. Well, you certainly couldn't</p> <p>6 follow the instructions of PETA who thought</p> <p>7 everything could be done within a couple of</p> <p>8 weeks. So some of these were complicated;</p> <p>9 for example, changing anything that has to do</p> <p>10 with housing requirements would take some</p> <p>11 time.</p> <p>12 Q. Were these two issues that you</p> <p>13 identified on the first page of this report</p> <p>14 unique to the guidelines for egg laying hens?</p> <p>15 A. No.</p> <p>16 Q. Did they also apply to other</p> <p>17 industry guidelines that FMI was reviewing?</p> <p>18 A. As far as animal welfare for</p> <p>19 other species?</p> <p>20 Q. Yes.</p> <p>21 A. Yes. This report is about all</p> <p>22 of the species. It's not just about the egg</p> <p>23 laying hens.</p> <p>24 Q. Can you turn to the page that</p> <p>25 is marked FMI-17. At the top it's entitled,</p>	<p style="text-align: right;">193</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 third bullet point down that page reads, "The</p> <p>3 UEP phase-in timetable for increasing the</p> <p>4 space allocation per bird (67 inches for</p> <p>5 White Leghorn hens; 76 inches for Brown Egg</p> <p>6 Layers) has been significantly shortened and</p> <p>7 a minimum standard has been added for all new</p> <p>8 and remodeled laying houses."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And is that an example of a gap</p> <p>12 that had been identified and addressed by UEP</p> <p>13 to the animal -- well, and addressed by UEP?</p> <p>14 MR. WILDERS: Objection. Vague.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MS. SUMNER:</p> <p>17 Q. Look at the bullet right above</p> <p>18 that, it notes that "UEP has undertaken three</p> <p>19 research projects looking at the molting of</p> <p>20 laying hens without withdrawing feed."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Is that accurate?</p> <p>24 A. I presume so. That's what UEP</p> <p>25 told us.</p>

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<p style="text-align: right;">194</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Is that another action that was</p> <p>3 taken by UEP in response to a gap identified</p> <p>4 by FMI's experts?</p> <p>5 A. I don't know the answer to that</p> <p>6 question. I don't know when that research</p> <p>7 was undertaken or whether it related at all</p> <p>8 to what we had identified, what the experts</p> <p>9 had identified. So not knowing the</p> <p>10 timetable, I have no idea. I don't know when</p> <p>11 the research began. I don't know when it was</p> <p>12 concluded or what the results were.</p> <p>13 Q. Am I correct that one of the</p> <p>14 gaps that FMI's experts have identified did</p> <p>15 relate to feed withdrawal molting?</p> <p>16 A. Yes, that is starving the</p> <p>17 chickens, true.</p> <p>18 - - -</p> <p>19 (Exhibit Brown-22, 7/2/02</p> <p>20 Letter, Bates FMI-002277 - FMI-002293,</p> <p>21 was marked for identification.)</p> <p>22 - - -</p> <p>23 BY MS. SUMNER:</p> <p>24 Q. Ms. Brown, I'd like to show you</p> <p>25 a document that's been marked as Brown-22.</p>	<p style="text-align: right;">196</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 identification.)</p> <p>3 - - -</p> <p>4 BY MS. SUMNER:</p> <p>5 Q. Ms. Brown, I want to show you</p> <p>6 the next four exhibits. The first one marked</p> <p>7 as Brown-23 is FMI-77 through 78. Brown-24</p> <p>8 is FMI-75. Brown-25 is FMI-76. And Brown-26</p> <p>9 is FMI-4436.</p> <p>10 A. Yes.</p> <p>11 Q. Do you recognize these</p> <p>12 documents, Ms. Brown?</p> <p>13 A. I do.</p> <p>14 Q. What are they?</p> <p>15 A. They are status charts on where</p> <p>16 the experts were on the guidelines that they</p> <p>17 were reviewing.</p> <p>18 Q. And did you draft these</p> <p>19 documents?</p> <p>20 A. I did.</p> <p>21 Q. And in drafting them, was it</p> <p>22 your intent that they be truthful and</p> <p>23 accurate?</p> <p>24 A. Yes.</p> <p>25 Q. And do the reports reflect your</p>
<p style="text-align: right;">195</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 It bears the Bates FMI-2277 through 93. I'd</p> <p>3 like to focus your attention on the second</p> <p>4 page of this document.</p> <p>5 A. Okay.</p> <p>6 Q. And my question is, is this a</p> <p>7 copy of the 2002 UEP guidelines that FMI and</p> <p>8 NCCR recommended for their members as of</p> <p>9 June 2002?</p> <p>10 A. Yes, I presume so. They made a</p> <p>11 lot of changes. They didn't always change</p> <p>12 the covers, which is understandable.</p> <p>13 - - -</p> <p>14 (Exhibits Brown-23, Status</p> <p>15 FMI-NCCR Animal Welfare Guidelines</p> <p>16 Updated October 2004, Bates FMI-000077</p> <p>17 & FMI-000078; Brown-24, Status</p> <p>18 FMI-NCCR Animal Welfare Guidelines</p> <p>19 Updated February 2005, Bates</p> <p>20 FMI-000075; Brown-25, Status FMI-NCCR</p> <p>21 Animal Welfare Guidelines Updated</p> <p>22 March 2007, Bates FMI-000076; and</p> <p>23 Brown-26, Status FMI-NCCR Animal</p> <p>24 Welfare Guidelines Updated May 2008,</p> <p>25 Bates FMI-004436, were marked for</p>	<p style="text-align: right;">197</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 personal knowledge of the work on FMI's</p> <p>3 animal welfare program and review of the</p> <p>4 producer guidelines as of the dates they were</p> <p>5 drafted?</p> <p>6 A. My professional knowledge, yes.</p> <p>7 Q. And did you draft these reports</p> <p>8 as part of your regular business as senior</p> <p>9 vice president of FMI?</p> <p>10 A. I did.</p> <p>11 Q. And were these kept in the</p> <p>12 regular course of FMI's business?</p> <p>13 A. Yes.</p> <p>14 Q. I'd like to direct your</p> <p>15 attention to the one that has been marked as</p> <p>16 exhibit, it's got the Bates number 76 at the</p> <p>17 bottom. I believe it's 25.</p> <p>18 A. Yes.</p> <p>19 Q. And the second row down is</p> <p>20 entitled UEP or "United Egg Producers." Do</p> <p>21 you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And under "FMI-NCCR Endorsement."</p> <p>24 A. Yes.</p> <p>25 Q. Can you read to me what it says</p>

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<p style="text-align: right;">198</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 next to "United Egg Producers"?</p> <p>3 A. "Endorsed production, handling,</p> <p>4 transportation, processing and euthanasia</p> <p>5 guidelines for layers of shell and breaking</p> <p>6 eggs..."</p> <p>7 Q. So at this point in time as of</p> <p>8 March 2007 FMI and NCCR endorsed the UEP</p> <p>9 guidelines. Correct?</p> <p>10 MR. WILDERS: Objection.</p> <p>11 Misstates the testimony.</p> <p>12 MR. RANDALL: Objection.</p> <p>13 THE WITNESS: Yes, our advisors</p> <p>14 endorsed it. We went through this</p> <p>15 before. The FMI specifically we --</p> <p>16 our advisors endorsed the guidelines.</p> <p>17 BY MS. SUMNER:</p> <p>18 Q. This document doesn't say --</p> <p>19 A. I understand that.</p> <p>20 Q. -- FMI expert advisory panel</p> <p>21 endorsement, does it?</p> <p>22 MR. RANDALL: Objection to form.</p> <p>23 MR. PATTON: Leading.</p> <p>24 BY MS. SUMNER:</p> <p>25 Q. You can answer the question.</p>	<p style="text-align: right;">200</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. That's not what it means, but</p> <p>3 that's what it says.</p> <p>4 Q. At this point in time, were</p> <p>5 there any points of difference or any</p> <p>6 remaining gaps that had not been addressed by</p> <p>7 UEP?</p> <p>8 A. I assume none that were</p> <p>9 considered critical.</p> <p>10 Q. You drafted this document.</p> <p>11 Correct?</p> <p>12 A. I did.</p> <p>13 Q. If there had been a gap that</p> <p>14 remained unaddressed, would you have included</p> <p>15 it under points of difference?</p> <p>16 A. If it had been identified by</p> <p>17 our advisors, yes.</p> <p>18 Q. So at this point in time, there</p> <p>19 were no remaining unaddressed gaps that had</p> <p>20 been identified by your animal expert</p> <p>21 advisory panel. Correct?</p> <p>22 A. Correct. But the 2002 number</p> <p>23 means that's when they're first -- first time</p> <p>24 they were -- you know, that's what we were</p> <p>25 looking at initially. So we didn't</p>
<p style="text-align: right;">199</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. There wasn't enough room.</p> <p>3 Q. That's not my question.</p> <p>4 A. It had to fit on one sheet of</p> <p>5 paper. I understand, I'm just --</p> <p>6 Q. Answer my question, Ms. Brown.</p> <p>7 A. I did answer the question. I</p> <p>8 answered it accurately. This -- FMI advisors</p> <p>9 endorsed these guidelines. We were not in a</p> <p>10 position to know whether the guidelines were</p> <p>11 any good or not when we began this process.</p> <p>12 So that's what the expert advisory panel's</p> <p>13 process was. I can assure you that had I</p> <p>14 known I was going to be sitting in this chair</p> <p>15 today, I would have had, you know, it clearly</p> <p>16 spelled out. But from the perspective of</p> <p>17 trying to fit everything on one page and get</p> <p>18 it onto a Web site, FMI-NCCR endorsement.</p> <p>19 Q. And that's what it says, FMI</p> <p>20 and NCCR endorsement?</p> <p>21 A. That's what it says.</p> <p>22 MR. WILDERS: Asked and</p> <p>23 answered. Badgering.</p> <p>24 BY MS. SUMNER:</p> <p>25 Q. At this point --</p>	<p style="text-align: right;">201</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 endorse -- the advisors did not endorse this</p> <p>3 complete document because there were parts of</p> <p>4 this document that they did not agree with</p> <p>5 for the best practices for humane handling.</p> <p>6 MR. RANDALL: Could you just</p> <p>7 clarify for the record what document?</p> <p>8 THE WITNESS: The document is</p> <p>9 United Egg Producers Animal Husbandry</p> <p>10 Guidelines for U.S. Egg Laying Flocks</p> <p>11 2002 Edition. This is the early</p> <p>12 edition. They had later editions that</p> <p>13 included the changes that were made</p> <p>14 and additional points that we had</p> <p>15 suggested would be more helpful to</p> <p>16 explain to their producers how to</p> <p>17 actually implement what they were</p> <p>18 recommending. So this is the</p> <p>19 original -- this is the 2002</p> <p>20 guidelines that you've given me.</p> <p>21 BY MS. SUMNER:</p> <p>22 Q. And those 2002 guidelines, in</p> <p>23 your June 2002 report, that was provided to</p> <p>24 all of your members as well as I believe you</p> <p>25 testified provided to the public on your Web</p>

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<p style="text-align: right;">202</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 site and to the press.</p> <p>3 A. We didn't provide these</p> <p>4 guidelines to our members.</p> <p>5 MR. PATTON: Identify the</p> <p>6 exhibit please.</p> <p>7 THE WITNESS: What are you</p> <p>8 talking about?</p> <p>9 BY MS. SUMNER:</p> <p>10 Q. Let me rephrase the question.</p> <p>11 I'm asking you a question. Let me just start</p> <p>12 over.</p> <p>13 MR. PATTON: Let's have the</p> <p>14 exhibit identified she's talking</p> <p>15 about.</p> <p>16 MS. SUMNER: I'm not talking</p> <p>17 about an exhibit.</p> <p>18 MR. PATTON: The witness is.</p> <p>19 She's talking about an exhibit, and we</p> <p>20 should know what it is.</p> <p>21 MS. SUMNER: Let me ask a</p> <p>22 question, Mr. Patton.</p> <p>23 MR. PATTON: You don't want her</p> <p>24 to identify the exhibit then?</p> <p>25 MR. MCKENNEY: I don't think</p>	<p style="text-align: right;">204</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 statement. Correct?</p> <p>3 A. Yes.</p> <p>4 MR. WILDERS: Asked and</p> <p>5 answered.</p> <p>6 BY MS. SUMNER:</p> <p>7 Q. I just want to confirm that the</p> <p>8 guidelines --</p> <p>9 A. But there's exceptions to that.</p> <p>10 We did not think that all the guidelines were</p> <p>11 as good as they could be. The whole basis of</p> <p>12 this scientific process from the standpoint</p> <p>13 of our animal scientist was continuous</p> <p>14 improvement. It's a very important term when</p> <p>15 it comes to best practices. Continuous</p> <p>16 improvement. Not everything can be done</p> <p>17 today, but here's where you need to get to</p> <p>18 tomorrow. So UEP, having been one of the</p> <p>19 first organizations who began this process</p> <p>20 before we even got involved, was very far</p> <p>21 along. The only organization that was</p> <p>22 further along was the American Meat</p> <p>23 Institute. So I mean, they had done great</p> <p>24 work, and so we were saying to our members,</p> <p>25 if you're looking for something to share with</p>
<p style="text-align: right;">203</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 that's what Ms. Sumner said.</p> <p>3 BY MS. SUMNER:</p> <p>4 Q. Let me start over with the</p> <p>5 question.</p> <p>6 In your 2002 -- in your</p> <p>7 June 2002 interim report, if you pull that</p> <p>8 out again, that was marked -- do you have</p> <p>9 that exhibit?</p> <p>10 A. 19.</p> <p>11 Q. Yes, that was marked as</p> <p>12 Brown-19. In that report, the -- I want to</p> <p>13 just direct your attention to the third page,</p> <p>14 FMI-17, and this report was provided to all</p> <p>15 of your members as well as to the public.</p> <p>16 Correct?</p> <p>17 A. Correct.</p> <p>18 Q. In this report you wrote, "FMI</p> <p>19 and NCCR recommend to their members the 2002</p> <p>20 guidelines of the United Egg Producers...for</p> <p>21 use with their suppliers for eggs and egg</p> <p>22 products."</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. And that is an accurate</p>	<p style="text-align: right;">205</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 your producers at this point in time, the</p> <p>3 best document out there is the UEP</p> <p>4 guidelines.</p> <p>5 Q. And those guidelines that you</p> <p>6 were referring to here are the guidelines</p> <p>7 that have been marked as Brown Exhibit --</p> <p>8 A. 22.</p> <p>9 Q. -- 22.</p> <p>10 A. 22?</p> <p>11 Q. Yes.</p> <p>12 A. You're talking about this</p> <p>13 pamphlet?</p> <p>14 Q. Yes, Brown Exhibit 22. Is that</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. And when you say there were</p> <p>18 exceptions, what you mean is that there were</p> <p>19 still some points of difference that had been</p> <p>20 identified by your animal welfare experts</p> <p>21 that remained to be addressed at this point</p> <p>22 in time?</p> <p>23 A. Yes.</p> <p>24 Q. Correct?</p> <p>25 A. Yes, pretty specific, pretty</p>

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<p style="text-align: right;">206</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 significant points. This was a collaborative</p> <p>3 process. We were not in the business of</p> <p>4 telling our producers what to do. We were</p> <p>5 trying to work with our producers, and our</p> <p>6 main goal was to improve the handling, the</p> <p>7 humane handling of farm animals. So that was</p> <p>8 the main goal of our collaboration with the</p> <p>9 producers. We weren't going to tell them</p> <p>10 what to do. We were going to set up an</p> <p>11 advisory panel of experts who could make</p> <p>12 recommendations to them about ways they could</p> <p>13 improve their practices so they could</p> <p>14 progress towards best practices.</p> <p>15 Q. Are you familiar, Ms. Brown,</p> <p>16 with the term "100 percent rule"?</p> <p>17 A. The term what?</p> <p>18 Q. The term "100 percent rule,"</p> <p>19 have you heard that term before?</p> <p>20 A. Not that I recall. I am a</p> <p>21 compendium of trivia that I put on erase as</p> <p>22 of January 30, 2009. There just wasn't</p> <p>23 enough room in there for all that stuff.</p> <p>24 Q. Do you understand that to be a</p> <p>25 UEP certified company, a company must</p>	<p style="text-align: right;">208</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Ms. Brown, can you just take a</p> <p>3 moment and review this e-mail chain and let</p> <p>4 me know when you've done so.</p> <p>5 A. Where does it start, on the</p> <p>6 last page?</p> <p>7 Q. Yes. It's in reverse</p> <p>8 chronological order like most e-mail chains</p> <p>9 unfortunately are. It's confusing.</p> <p>10 A. Oh, 100 percent products.</p> <p>11 That's different than the concept I was</p> <p>12 talking about. This is breaking eggs versus</p> <p>13 shell eggs. Correct?</p> <p>14 MR. GREEN: Wait for the</p> <p>15 question.</p> <p>16 THE WITNESS: I'm just trying to</p> <p>17 get clarification on the -- because it</p> <p>18 doesn't say. Okay.</p> <p>19 BY MS. SUMNER:</p> <p>20 Q. Is this a series of e-mails</p> <p>21 that were exchanged between you and Brian</p> <p>22 Joyer on -- between July 21 and 24, 2003, in</p> <p>23 the course of your work as FMI's senior vice</p> <p>24 president?</p> <p>25 A. I think the original e-mail</p>
<p style="text-align: right;">207</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 implement the UEP guidelines across all of</p> <p>3 its egg laying hens?</p> <p>4 A. In that context, I know what</p> <p>5 according to UEP that 100 percent meant.</p> <p>6 Q. What is your understanding of</p> <p>7 that?</p> <p>8 A. That all of the houses had to</p> <p>9 be inspected, I think.</p> <p>10 Q. And what was FMI's position on</p> <p>11 that concept?</p> <p>12 A. I was not involved in technical</p> <p>13 discussions that had to do with housing and</p> <p>14 inspections and all of that. So I don't --</p> <p>15 I'm not --</p> <p>16 - - -</p> <p>17 (Exhibit Brown-27, E-mail chain,</p> <p>18 Bates FMI-001781 - FMI-001783, was</p> <p>19 marked for identification.)</p> <p>20 - - -</p> <p>21 BY MS. SUMNER:</p> <p>22 Q. Let me show you a document</p> <p>23 that's been marked as Brown-27. This is a</p> <p>24 document bearing the Bates numbers FMI-1781</p> <p>25 through 83.</p>	<p style="text-align: right;">209</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 went to Tim Hammonds and I was cc'd.</p> <p>3 Q. But you were copied on all of</p> <p>4 these e-mails --</p> <p>5 A. Yes.</p> <p>6 Q. -- you either sent or received</p> <p>7 them in the course of your work at FMI?</p> <p>8 A. Yes.</p> <p>9 Q. Who is Brian Joyer?</p> <p>10 A. I have no idea at this point in</p> <p>11 time. He says he's director of quality</p> <p>12 assurance for Sparboe Farms.</p> <p>13 Q. What's Sparboe Farms?</p> <p>14 A. It's a UEP member, or was at</p> <p>15 the time.</p> <p>16 Q. Is it an egg producer?</p> <p>17 A. I presume so.</p> <p>18 Q. I'd like to direct your</p> <p>19 attention to the last page of this document.</p> <p>20 It ends in 1783 is the Bates number. The</p> <p>21 e-mail starts on the prior page so just to</p> <p>22 get the context, this is Mr. Joyer writing to</p> <p>23 Tim Hammonds, and cc to you. And he asks the</p> <p>24 question, this is on 1783, "What is</p> <p>25 FMI/NCCR's position on implementing the</p>

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<p style="text-align: right;">210</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 guidelines? Should a company allow the</p> <p>3 marketplace to influence the amount of</p> <p>4 product produced under the guidelines or</p> <p>5 should the company commit 100% of their</p> <p>6 products to the guidelines regardless of the</p> <p>7 interest from customers and consumers? Is</p> <p>8 your position the same across all producer</p> <p>9 organizations?"</p> <p>10 What did you understand</p> <p>11 Mr. Joyer to be asking?</p> <p>12 A. I wasn't 100 percent sure what</p> <p>13 all the questions meant. The answer to that</p> <p>14 is point number two. Well, one and two. It</p> <p>15 was a several part question.</p> <p>16 Q. So did Mr. Hammonds ask you to</p> <p>17 respond to Mr. Joyer?</p> <p>18 A. Yes, he did.</p> <p>19 Q. And was your response reflected</p> <p>20 on the e-mail you -- or in the e-mail you</p> <p>21 sent on Thursday, July 24th at 1:57?</p> <p>22 A. Yes.</p> <p>23 Q. And what was your response?</p> <p>24 A. Do you want me to read it?</p> <p>25 Q. Yes.</p>	<p style="text-align: right;">212</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 program with UEP.</p> <p>3 Q. That was your response to his</p> <p>4 first question about the audit. Correct?</p> <p>5 MR. WILDERS: Objection.</p> <p>6 Leading.</p> <p>7 THE WITNESS: The first question</p> <p>8 is, what is our position on</p> <p>9 implementing the guidelines.</p> <p>10 BY MS. SUMNER:</p> <p>11 Q. I'm sorry. Let's back up and</p> <p>12 look at the Joyer e-mail more carefully. I</p> <p>13 do agree that this is confusing, but I think</p> <p>14 if we go through it carefully, we can</p> <p>15 clarify.</p> <p>16 His e-mail to you, it starts on</p> <p>17 1782.</p> <p>18 A. Correct.</p> <p>19 Q. Says, "There are three points I</p> <p>20 wanted to clarify." And he's got three</p> <p>21 asterisks -- three bullet points, asterisks,</p> <p>22 whatever you want to call them. The first</p> <p>23 one relates to audit issues. Correct?</p> <p>24 A. Yes.</p> <p>25 Q. I'm not asking you about the</p>
<p style="text-align: right;">211</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. "Regarding the questions you</p> <p>3 raise about the FMI-NCCR June 2003 report on</p> <p>4 our animal welfare program:</p> <p>5 "FMI and NCCR developed" --</p> <p>6 Q. Let me just -- I'm sorry, I</p> <p>7 didn't mean to interrupt you, but let me just</p> <p>8 clarify my question. My question is, what</p> <p>9 was your response not to all of Mr. Joyer's</p> <p>10 questions, but in response to the specific</p> <p>11 question that I had read to you about should</p> <p>12 the company commit 100 percent of their</p> <p>13 products to the guidelines regardless of the</p> <p>14 interest of consumers?</p> <p>15 A. Okay. So you only care about</p> <p>16 that one part. He's got several questions in</p> <p>17 that asterisk.</p> <p>18 Q. Yes.</p> <p>19 A. We are working with UEP and</p> <p>20 USDA-ARPAS to reconcile the two audit</p> <p>21 programs so that they are interchangeable.</p> <p>22 We have not yet achieved 100% parity..., but</p> <p>23 that is the goal. At this point we hope to</p> <p>24 endorse the UEP audit. We are not (sic)</p> <p>25 involved in a cooperative auditor training</p>	<p style="text-align: right;">213</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 audit.</p> <p>3 A. Okay.</p> <p>4 Q. His second question says, "What</p> <p>5 is FMI/NCCR's position on implementing the</p> <p>6 guidelines? Should a company allow the</p> <p>7 marketplace to influence the amount of</p> <p>8 products produced...or should the company</p> <p>9 commit 100% of their products to the</p> <p>10 guidelines regardless of the interest..."</p> <p>11 Then the third question he asks</p> <p>12 is, "Does FMI/NCCR require a seal..." And</p> <p>13 when you responded, you laid out your answer</p> <p>14 1, 2, 3. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And does 1, 2 and 3, do those</p> <p>17 correspond to Mr. Joyer's bullets?</p> <p>18 A. I don't think we answered all</p> <p>19 of his bullets, I mean, all parts of his</p> <p>20 bullets.</p> <p>21 Q. What did -- you answered number</p> <p>22 2. "Our goal is enhanced animal welfare for</p> <p>23 all animals in food production - not animals</p> <p>24 used only for certain products or product</p> <p>25 categories. This is our position for all</p>

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<p style="text-align: right;">214</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 producer groups."</p> <p>3 A. That's true.</p> <p>4 Q. That was indeed your position?</p> <p>5 A. Yes.</p> <p>6 Q. Why was that FMI's position?</p> <p>7 A. Because all animals, what</p> <p>8 difference does it make what product they're</p> <p>9 going to be. They're all animals who are in</p> <p>10 a system which needed to be improved</p> <p>11 significantly. So if I'm a chicken whose</p> <p>12 eggs are going into this product versus a</p> <p>13 chicken whose eggs are going into that</p> <p>14 product, why should that make any difference</p> <p>15 as to how I'm handled as an animal. Why</p> <p>16 should I be less humanely handled because of</p> <p>17 what product I end up in, if I understand the</p> <p>18 question. So if you come back as an animal,</p> <p>19 you better make sure what kind you come back</p> <p>20 as.</p> <p>21 - - -</p> <p>22 (Exhibit Brown-28, E-mail chain,</p> <p>23 Bates FMI-003090 & FMI-003091, was</p> <p>24 marked for identification.)</p> <p>25 - - -</p>	<p style="text-align: right;">216</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 implement the guidelines on only the number</p> <p>3 of hens it needed to fill a customer needs.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And then he says, "Should this</p> <p>7 group seek to receive the endorsement of</p> <p>8 either FMI or NCCR, we would hope that you</p> <p>9 would respond by only endorsing UEP's</p> <p>10 guidelines for egg-laying hens."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And then your response, you</p> <p>14 wrote, "On the second issue -- we have no</p> <p>15 intention to endorse a second set of</p> <p>16 guidelines for laying hens that are weaker</p> <p>17 than the UEP guidelines."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. What do you mean by that?</p> <p>21 A. We were involved in a process</p> <p>22 of making progressive changes to a system</p> <p>23 that needed some significant changes. And we</p> <p>24 were not interested in anything that would be</p> <p>25 regressive. So if the guidelines were going</p>
<p style="text-align: right;">215</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. SUMNER:</p> <p>3 Q. I'm going to show you another</p> <p>4 document that's been marked as Brown-28.</p> <p>5 A. I haven't gotten it yet. Thank</p> <p>6 you.</p> <p>7 Q. I've marked as Brown-28 a</p> <p>8 document bearing the Bates FMI-3090 through</p> <p>9 91.</p> <p>10 Ms. Brown, do you recognize</p> <p>11 this as an e-mail conversation between you</p> <p>12 and Gene Gregory that you sent and received</p> <p>13 on or about May 20 -- May 2, 2003, May 2 to</p> <p>14 3, 2003, in the course of your work at FMI?</p> <p>15 A. That's what it looks like.</p> <p>16 Q. Let's focus on the first e-mail</p> <p>17 in the chain which is from Gene to you and</p> <p>18 Terrie Dort. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Gene wrote to you that there</p> <p>21 was a program that would implement a rule</p> <p>22 that instead -- I'm at the very bottom of</p> <p>23 page 1 where he says, Instead of implementing</p> <p>24 animal welfare guidelines on 100% of their</p> <p>25 egg-production houses, they would simply</p>	<p style="text-align: right;">217</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 to be weaker than UEP, which was the floor,</p> <p>3 then that would be regressive.</p> <p>4 Q. And did FMI consider guidelines</p> <p>5 that were required to be implemented on less</p> <p>6 than 100 percent of production houses to be</p> <p>7 weaker than the UEP guidelines?</p> <p>8 MR. RANDALL: Objection to form.</p> <p>9 MR. WILDERS: Also misstates the</p> <p>10 evidence. Assumes facts.</p> <p>11 THE WITNESS: We did not get</p> <p>12 into the issue of whether or not it</p> <p>13 should be -- there's a difference</p> <p>14 between -- if you mean 100 percent of</p> <p>15 the houses for egg laying hens whose</p> <p>16 products, whose eggs were going to be</p> <p>17 divided into two different channels,</p> <p>18 for example, shell eggs going in</p> <p>19 cartons for consumers in the</p> <p>20 supermarket or breaking eggs that were</p> <p>21 going to be sold to Kraft and General</p> <p>22 Foods and the people who use eggs in</p> <p>23 their manufacturing product, and the</p> <p>24 animals whose eggs were going into</p> <p>25 shell eggs and those were the animals</p>

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<p style="text-align: right;">218</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 whose handling was going to follow the</p> <p>3 UEP guidelines, and the other animals</p> <p>4 whose eggs were going into</p> <p>5 manufactured product, those animals'</p> <p>6 handling was not going to be following</p> <p>7 the UEP guidelines, that was a concept</p> <p>8 that we would not agree with. That</p> <p>9 gets back to the point of how we</p> <p>10 handle the animal, how humanely we</p> <p>11 handle the animal depends upon where</p> <p>12 the end product ends up. That we did</p> <p>13 not think was humane. So if that's</p> <p>14 the context in which you're talking,</p> <p>15 then that would be my response. It</p> <p>16 doesn't seem fair to the animals.</p> <p>17 BY MS. SUMNER:</p> <p>18 Q. Let's go back to your</p> <p>19 presentation which we are nearing the end of.</p> <p>20 Exhibit 3. I'd like to focus you on the page</p> <p>21 that talks about verification program.</p> <p>22 A. Could you give me a number?</p> <p>23 Q. This is 3067. It starts on</p> <p>24 3067. It spans a couple of pages.</p> <p>25 A. You understand the verification</p>	<p style="text-align: right;">220</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 following the guidelines.</p> <p>3 Q. Initially who did FMI believe</p> <p>4 should develop and run the audit program?</p> <p>5 A. A third-party independent</p> <p>6 organization. And we put out bids to</p> <p>7 several.</p> <p>8 Q. What was the basis for that</p> <p>9 belief?</p> <p>10 A. Because the industry can't</p> <p>11 audit itself and be credible. A self audit</p> <p>12 is fine as an informational tool or an</p> <p>13 educational tool for a company, but if you</p> <p>14 want true credibility that you're doing</p> <p>15 something the way you say you're doing it,</p> <p>16 then a third-party independent -- an</p> <p>17 independent third party is the best way to go</p> <p>18 about that.</p> <p>19 Q. Was that a position that was</p> <p>20 shared by PETA?</p> <p>21 A. I don't know. Probably. But</p> <p>22 they didn't -- again, they want broccoli in</p> <p>23 the -- that isn't the reason why FMI would</p> <p>24 have gone with that kind of program. But</p> <p>25 I'll tell you something, I don't think</p>
<p style="text-align: right;">219</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 program died?</p> <p>3 Q. Yes.</p> <p>4 A. So...</p> <p>5 Q. What was the verification</p> <p>6 program being referred to here?</p> <p>7 A. This was the SES program. It</p> <p>8 was a third-party independent audit that was</p> <p>9 originally developed to be used voluntarily</p> <p>10 by producers at the request of the retailers.</p> <p>11 So that the retailers could be assured that</p> <p>12 the producers were actually following the</p> <p>13 guidelines that had been endorsed by FMI's</p> <p>14 experts. The one common audit format if</p> <p>15 you're asking what that is -- I'm not sure</p> <p>16 what your question is.</p> <p>17 Q. No, I just generally wanted to</p> <p>18 understand the verification program was some</p> <p>19 kind of audit program. Correct?</p> <p>20 A. Correct.</p> <p>21 Q. Was the rationale for the audit</p> <p>22 to give the program credibility?</p> <p>23 A. The rationale for the audit was</p> <p>24 to make sure that the producers who said they</p> <p>25 were following the guidelines were actually</p>	<p style="text-align: right;">221</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 consumers, I don't think our customers would</p> <p>3 have had a high degree of trust in a program</p> <p>4 where industry is auditing itself. So a</p> <p>5 third-party -- independent third-party audit</p> <p>6 programs are the best from the standpoint of</p> <p>7 consumer credibility. PETA was not our</p> <p>8 focus. They were an irritant. There was no</p> <p>9 question about that. But our focus was doing</p> <p>10 what we could for our member companies so</p> <p>11 that they could go to their customers and</p> <p>12 they could in an open, transparent, honest</p> <p>13 way tell them what they were doing to enhance</p> <p>14 and move animal welfare forward by working</p> <p>15 collaboratively with their suppliers because</p> <p>16 we weren't going to tell our suppliers what</p> <p>17 to do.</p> <p>18 - - -</p> <p>19 (Exhibit Brown-29, 12/27/02</p> <p>20 E-mail, Bates FMI-001983, was marked</p> <p>21 for identification.)</p> <p>22 - - -</p> <p>23 BY MS. SUMNER:</p> <p>24 Q. I'd like to show you a document</p> <p>25 I've marked as Brown-29. It's an e-mail</p>

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<p style="text-align: right;">222</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 bearing the Bates number FMI-1983.</p> <p>3 A. I don't know when I had time to</p> <p>4 do anything else. Oh, my favorite -- my</p> <p>5 least favorite person, Steve Gross. Well,</p> <p>6 this isn't my document. This is -- I'm</p> <p>7 copied on this document, yes.</p> <p>8 MR. GREEN: Wait for the</p> <p>9 question.</p> <p>10 BY MS. SUMNER:</p> <p>11 Q. Ms. Brown, is this an e-mail</p> <p>12 that you received on or about December 27,</p> <p>13 2002, in the course of your work as an FMI</p> <p>14 senior vice president?</p> <p>15 A. Yes.</p> <p>16 Q. It's an e-mail that was sent</p> <p>17 from Steve Gross to Brian Dowling. Is that</p> <p>18 correct?</p> <p>19 A. That's what it says.</p> <p>20 Q. Who is Steve Gross?</p> <p>21 A. He's with PETA.</p> <p>22 Q. And Brian Dowling is one of</p> <p>23 your members with Safeway?</p> <p>24 A. He was at Safeway.</p> <p>25 Q. Mr. Gross wrote, "PETA would</p>	<p style="text-align: right;">224</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 privy to the background or the reason</p> <p>3 why that went forward.</p> <p>4 BY MS. SUMNER:</p> <p>5 Q. At some point in time, did the</p> <p>6 audit component of FMI's animal welfare</p> <p>7 program change?</p> <p>8 A. It went away.</p> <p>9 Q. Why did that happen?</p> <p>10 A. There were producers who were</p> <p>11 refusing to undertake a third-party, an</p> <p>12 independent third-party audit. They felt</p> <p>13 that they could audit themselves. And if</p> <p>14 there was no benefit to SES to recover the</p> <p>15 cost that they had put into the -- resources</p> <p>16 that they had put into developing the audit</p> <p>17 and the training materials and certifying</p> <p>18 auditors, then the business model wasn't</p> <p>19 going to work.</p> <p>20 Q. So was it FMI's decision to do</p> <p>21 away with the audit program?</p> <p>22 A. It was SES' decision that the</p> <p>23 audit wasn't going to work. I mean, it was</p> <p>24 not a sustainable business model.</p> <p>25 Q. So SES refused to do the audit?</p>
<p style="text-align: right;">223</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 like to clarify that audits done by producer</p> <p>3 groups such as UEP or by private groups such</p> <p>4 as FACTA will not be considered by PETA as</p> <p>5 legitimate audits."</p> <p>6 Is that correct?</p> <p>7 A. That's what it says.</p> <p>8 Q. And was that a factor in the</p> <p>9 insistence of FMI, that FMI or a third-party</p> <p>10 administer the audit component and not the</p> <p>11 producers?</p> <p>12 A. No.</p> <p>13 Q. And that was because you</p> <p>14 disregarded PETA?</p> <p>15 MR. WILDERS: Objection.</p> <p>16 THE WITNESS: We were not doing</p> <p>17 anything within our program to</p> <p>18 acquiesce to PETA. Definitely PETA</p> <p>19 was a factor and concern on the part</p> <p>20 of the industry because of the</p> <p>21 campaigns they were running, the</p> <p>22 allegations they were making which</p> <p>23 were not clear, but PETA had -- you</p> <p>24 know, this is a communication between</p> <p>25 PETA and Safeway, and -- so I'm not</p>	<p style="text-align: right;">225</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. They undertook the audit, but</p> <p>3 they didn't have any customers. They didn't</p> <p>4 have enough customers to get a return on</p> <p>5 their investment. So with no ROI, you would</p> <p>6 have to be a crazy person to continue doing</p> <p>7 that when you're not getting any kind of</p> <p>8 return on what you put into it.</p> <p>9 Q. How did FMI -- well, strike</p> <p>10 that.</p> <p>11 FMI had identified the audit or</p> <p>12 an audit procedure as an important part of</p> <p>13 any animal welfare program. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. So how did FMI's program meet</p> <p>16 that need once SES was no longer running the</p> <p>17 third-party audit program?</p> <p>18 A. Well, now you're getting into a</p> <p>19 time period very close to when I left, so I</p> <p>20 really can't answer that question. In other</p> <p>21 words, FMI did not have the resources to</p> <p>22 develop an audit on its own in this area.</p> <p>23 There was some conversation about whether</p> <p>24 other third-party, independent third-party</p> <p>25 audit companies would be interested in</p>

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<p style="text-align: right;">226</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 picking up the animal welfare audit based on</p> <p>3 the guidelines that the experts had</p> <p>4 developed. But those conversations did not</p> <p>5 come to a conclusion before I retired.</p> <p>6 - - -</p> <p>7 (Exhibit Brown-30, 6/6/07</p> <p>8 E-mail, Bates FMI-003393 - FMI-003395,</p> <p>9 was marked for identification.)</p> <p>10 - - -</p> <p>11 BY MS. SUMNER:</p> <p>12 Q. Let me show you a document</p> <p>13 that's been marked as Brown-30. This is a</p> <p>14 document that bears the Bates numbers</p> <p>15 FMI-3393 through 95.</p> <p>16 Do you recognize this contract</p> <p>17 Ms. Brown?</p> <p>18 A. I see it's my document, yes.</p> <p>19 Q. What is this document?</p> <p>20 A. It's an update on the program.</p> <p>21 Q. This is another animal welfare</p> <p>22 program update that you authored?</p> <p>23 A. It's a memo to the member</p> <p>24 committee on -- yeah, on an update of our</p> <p>25 animal welfare expert advisory panel meeting.</p>	<p style="text-align: right;">228</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Is that accurate?</p> <p>3 A. That's correct.</p> <p>4 Q. It goes on then to say, "When</p> <p>5 FMI and NCCR joined efforts in 2001 to</p> <p>6 motivate food producers to develop animal</p> <p>7 welfare guideline programs, only the American</p> <p>8 Meat Institute had developed an audit</p> <p>9 component to verify conformance with their</p> <p>10 slaughter guidelines."</p> <p>11 Is that accurate?</p> <p>12 A. Yes.</p> <p>13 Q. Then it goes on to say,</p> <p>14 "Currently, all of the producer organizations</p> <p>15 which have guidelines endorsed by our</p> <p>16 Advisors, also have their own audit component</p> <p>17 or an audit checklist for the guidelines."</p> <p>18 Is that accurate?</p> <p>19 A. Yes.</p> <p>20 Q. And then it goes on to say,</p> <p>21 Therefore, based on the discussions with our</p> <p>22 advisors about animal welfare audits, we</p> <p>23 propose that FMI and NCCR proceed in the</p> <p>24 following manner -- that FMI and NCCR request</p> <p>25 for review a summary statement outlining</p>
<p style="text-align: right;">227</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you send this document to</p> <p>3 the individuals listed in the "To" column on</p> <p>4 or about June 6, 2007?</p> <p>5 A. Yes.</p> <p>6 Q. I'd like to turn your attention</p> <p>7 to the second page of the document under the</p> <p>8 heading "Animal Welfare...Program."</p> <p>9 A. You mean "Animal Welfare Audit</p> <p>10 Program"?</p> <p>11 Q. Yeah, "Animal Welfare Audit</p> <p>12 Program." Excuse me.</p> <p>13 A. Yes.</p> <p>14 Q. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. The first sentence reads, "On</p> <p>17 July 2, 2007, the contract between FMI, NCCR</p> <p>18 and SES...regarding the FMI-NCCR independent,</p> <p>19 third party animal welfare audit</p> <p>20 program...will expire."</p> <p>21 A. Correct.</p> <p>22 Q. It goes on to say, "We have</p> <p>23 notified SES that we do not intend to renew</p> <p>24 the contract."</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">229</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 existing animal welfare audit programs from</p> <p>3 each individual producer organization whose</p> <p>4 guidelines our Advisors have endorsed.</p> <p>5 Is that accurate?</p> <p>6 A. Yes.</p> <p>7 Q. And is that -- was that indeed</p> <p>8 done?</p> <p>9 A. I don't recall if we received</p> <p>10 any of that. Perhaps you have it in your</p> <p>11 pile of papers, but I don't recall it.</p> <p>12 Q. Today, does the FMI-NCCR Animal</p> <p>13 Welfare Program rely on the producer audits?</p> <p>14 A. I have no clue as to what FMI</p> <p>15 is doing or NCCR is doing today.</p> <p>16 Q. Do you know if that ever became</p> <p>17 a part of the FMI-NCCR program?</p> <p>18 A. I have no idea.</p> <p>19 Q. I believe you testified</p> <p>20 earlier, Ms. Brown, that the expert advisory</p> <p>21 panel that FMI had constituted remained in</p> <p>22 place after its initial review of the</p> <p>23 producer guidelines. Is that correct?</p> <p>24 A. Correct.</p> <p>25 Q. Is it correct that that</p>

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<p style="text-align: right;">230</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 advisory panel did an annual review of the</p> <p>3 producer guidelines to keep the program</p> <p>4 current?</p> <p>5 A. I'm not sure -- not exactly.</p> <p>6 They reviewed changes or there were producer</p> <p>7 organizations that had not gotten very far</p> <p>8 along yet, and those were reviewed more</p> <p>9 often.</p> <p>10 Q. Can you pull back out</p> <p>11 Exhibit 13 that we had marked earlier. This</p> <p>12 is a summary of a welfare advisors meeting</p> <p>13 that occurred on May 13 and 14, 2003.</p> <p>14 A. Well, we're not looking at them</p> <p>15 in order so they're all mixed up.</p> <p>16 Q. Do you have that?</p> <p>17 A. I do.</p> <p>18 Q. This is a document that you</p> <p>19 wrote. Correct?</p> <p>20 A. Correct.</p> <p>21 Q. The section that describes the</p> <p>22 advisory committee's role, do you see that?</p> <p>23 A. Do you want to point it out to</p> <p>24 me?</p> <p>25 Q. It's on the first page here,</p>	<p style="text-align: right;">232</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 guidelines, do you remember that?</p> <p>3 A. With exceptions.</p> <p>4 Q. Yeah, right. With the</p> <p>5 exceptions noted. And eventually the</p> <p>6 endorsement status on that chart got to the</p> <p>7 point where there were no exceptions.</p> <p>8 Correct?</p> <p>9 A. For UEP.</p> <p>10 Q. For UEP, yes. Is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. So in getting there, I assume</p> <p>13 that the expert advisory panel was reviewing</p> <p>14 subsequent versions of the guidelines.</p> <p>15 Correct?</p> <p>16 A. UEP was very good and</p> <p>17 enthusiastic about communicating with FMI</p> <p>18 about all of their work in this area.</p> <p>19 MS. SUMNER: Let's mark this as</p> <p>20 Brown-31.</p> <p>21 - - -</p> <p>22 (Exhibit Brown-31, United Egg</p> <p>23 Producers Animal Husbandry Guidelines</p> <p>24 for U.S. Egg Laying Flocks 2006</p> <p>25 Edition, Bates FMI-000386 -</p>
<p style="text-align: right;">231</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 and there's a heading, "Advisory Committee's</p> <p>3 Role."</p> <p>4 Do you see that?</p> <p>5 A. I see it.</p> <p>6 Q. The last sentence in the first</p> <p>7 paragraph says, "Additionally, the Committee</p> <p>8 will come together on an annual basis to</p> <p>9 review existing guidelines, new science and</p> <p>10 information, needed revisions, etc. to keep</p> <p>11 the program current."</p> <p>12 Is that accurate?</p> <p>13 A. That's what it says.</p> <p>14 Q. Did that happen?</p> <p>15 A. Not always.</p> <p>16 Q. Did it happen -- do you know</p> <p>17 when the last time they reviewed the</p> <p>18 guidelines was?</p> <p>19 A. The last guidelines they</p> <p>20 reviewed were the Turkey Federation's</p> <p>21 guidelines. That was very close to when I</p> <p>22 left.</p> <p>23 Q. Do you know whether on an</p> <p>24 ongoing basis, so we talked about how in the</p> <p>25 initial endorsement was of the 2002 UEP</p>	<p style="text-align: right;">233</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 FMI-000408, was marked for</p> <p>3 identification.)</p> <p>4 - - -</p> <p>5 THE WITNESS: Is there a reason</p> <p>6 why this page was dog eared just so</p> <p>7 that I should go to --</p> <p>8 BY MS. SUMNER:</p> <p>9 Q. I am going to ask you to go to</p> <p>10 that page.</p> <p>11 A. Is that the one you want me to</p> <p>12 look at?</p> <p>13 Q. Let me first ask you,</p> <p>14 Ms. Brown --</p> <p>15 A. 392, is that the one you want</p> <p>16 me to look at?</p> <p>17 Q. Yeah. I have marked a document</p> <p>18 as Brown-31 that bears the Bates numbers 386,</p> <p>19 FMI-386 to FMI-408.</p> <p>20 A. Okay.</p> <p>21 Q. And this is the 2006 edition of</p> <p>22 the UEP Animal Husbandry Guidelines that was</p> <p>23 produced from FMI's files.</p> <p>24 Did the FMI expert advisory</p> <p>25 panel review this version of the UEP</p>

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<p style="text-align: right;">234</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 guidelines?</p> <p>3 A. I would imagine so. You know</p> <p>4 there was some crossover between our experts</p> <p>5 and their experts, so I would imagine that</p> <p>6 some of our experts were very familiar with</p> <p>7 what their experts, because they were one and</p> <p>8 the same, so...</p> <p>9 Q. I'd like to direct your</p> <p>10 attention to the page that was turned down.</p> <p>11 Can you remind me what the number was, I</p> <p>12 think was 392?</p> <p>13 A. It was, yes, 392.</p> <p>14 Q. I just want to ask you a</p> <p>15 question about this page. What did -- do you</p> <p>16 know what FMI's animal welfare expert</p> <p>17 advisory panel's views were on the provision</p> <p>18 of the guidelines which appears on this page</p> <p>19 that prohibits backfilling?</p> <p>20 A. No.</p> <p>21 Q. Did any member of FMI's expert</p> <p>22 advisory panel ever raise a concern with you</p> <p>23 about this provision of the UEP --</p> <p>24 A. I'm not sure I understand what</p> <p>25 backfilling is, so I need a technical</p>	<p style="text-align: right;">236</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MS. SUMNER: At this point in</p> <p>3 time, I think we'd like to reserve the</p> <p>4 remaining time that we have for</p> <p>5 anything at the end.</p> <p>6 Go off the record for a minute.</p> <p>7 VIDEOGRAPHER: Off the record at</p> <p>8 3:54.</p> <p>9 - - -</p> <p>10 (A recess was taken.)</p> <p>11 - - -</p> <p>12 VIDEOGRAPHER: Back on the</p> <p>13 record at 4:12.</p> <p>14 - - -</p> <p>15 EXAMINATION</p> <p>16 - - -</p> <p>17 BY MR. HUTCHINSON:</p> <p>18 Q. Ms. Brown, my name is Troy</p> <p>19 Hutchinson. I represent an egg farmer up in</p> <p>20 Minnesota called Sparboe Farms. I know it's</p> <p>21 been a long time since you were involved in</p> <p>22 these issues.</p> <p>23 Do you ever remember meeting</p> <p>24 with anyone from Sparboe Farms?</p> <p>25 A. Not specifically. There were</p>
<p style="text-align: right;">235</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 explanation of the term. It's not</p> <p>3 transparent in the paragraph.</p> <p>4 Q. Let me ask you a simpler</p> <p>5 question. At any point in time, did any</p> <p>6 member of FMI's expert advisory panel</p> <p>7 communicate to you an issue or concern about</p> <p>8 the UEP provision on backfilling by referring</p> <p>9 to it specifically as backfilling?</p> <p>10 MR. WILDERS: Objection.</p> <p>11 Foundation.</p> <p>12 THE WITNESS: Not that I recall.</p> <p>13 Because I don't know what the term</p> <p>14 means. And they knew that I didn't</p> <p>15 know a lot of the technical terms, so</p> <p>16 they may not have used that term.</p> <p>17 BY MS. SUMNER:</p> <p>18 Q. Did at any time any member of</p> <p>19 FMI's expert advisory panel communicate to</p> <p>20 you an issue or a concern about a practice of</p> <p>21 restocking or refilling existing henhouses</p> <p>22 with new birds or younger birds or birds that</p> <p>23 were not raised with the original flock</p> <p>24 housed in that house?</p> <p>25 A. Not that I recall.</p>	<p style="text-align: right;">237</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 times when we had meetings with UEP when they</p> <p>3 had members of theirs in the room, more than</p> <p>4 one member in the room.</p> <p>5 Q. You don't remember someone from</p> <p>6 Sparboe Farms ever being at any of those</p> <p>7 meetings. Right?</p> <p>8 A. Not specifically.</p> <p>9 MR. HUTCHINSON: I have no</p> <p>10 further questions.</p> <p>11 We can go off the record.</p> <p>12 VIDEOGRAPHER: Off the record at</p> <p>13 4:13.</p> <p>14 - - -</p> <p>15 (A recess was taken.)</p> <p>16 - - -</p> <p>17 VIDEOGRAPHER: Back on the</p> <p>18 record at 4:15.</p> <p>19 - - -</p> <p>20 EXAMINATION</p> <p>21 - - -</p> <p>22 BY MR. WILDERS:</p> <p>23 Q. Good morning -- good afternoon,</p> <p>24 Ms. Brown. Thank you for your time today.</p> <p>25 I'm Brad Wilders, and I represent Associated</p>

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<p style="text-align: right;">238</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Wholesale Grocers, Ball Foods, Four B</p> <p>3 Corporation and Consentino's. And it's my</p> <p>4 turn to sort of ask you a few questions in</p> <p>5 follow up to what the defendant's counsel</p> <p>6 asked you. Okay?</p> <p>7 A. Yes.</p> <p>8 Q. I'll try not to repeat things</p> <p>9 as much as possible. In some instances I may</p> <p>10 have to repeat just a little bit to kind of</p> <p>11 set the record as to what other prior</p> <p>12 testimony I'm going to be asking you about.</p> <p>13 Okay?</p> <p>14 A. Okay.</p> <p>15 Q. Of course, if you don't</p> <p>16 understand my question, feel free to tell me</p> <p>17 and I'll try to fix it.</p> <p>18 At the beginning of today's</p> <p>19 deposition, you had testified to a question</p> <p>20 that you believed you had an understanding of</p> <p>21 FMI's members' views on animal welfare. Do</p> <p>22 you recall that?</p> <p>23 A. Yes.</p> <p>24 Q. And when you were answering</p> <p>25 questions with respect to the term "members,"</p>	<p style="text-align: right;">240</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. In the specific instance with</p> <p>3 respect to the animal welfare program and the</p> <p>4 best practices that were generated about the</p> <p>5 egg industry, did you ever have any</p> <p>6 discussions with anyone about that at AWG,</p> <p>7 Associated Wholesale Grocers?</p> <p>8 A. Not that I --</p> <p>9 MR. HUTCHINSON: Objection to</p> <p>10 form.</p> <p>11 THE WITNESS: Not that I recall</p> <p>12 specifically.</p> <p>13 BY MR. WILDERS:</p> <p>14 Q. Did you ever have any</p> <p>15 discussions with anyone at Consentino's about</p> <p>16 animal welfare generally?</p> <p>17 MR. HUTCHINSON: Objection to</p> <p>18 form.</p> <p>19 THE WITNESS: Not that I recall.</p> <p>20 BY MR. WILDERS:</p> <p>21 Q. Did you ever have any</p> <p>22 discussions with anyone at Four B about</p> <p>23 animal welfare?</p> <p>24 A. How do you spell that?</p> <p>25 Q. It's F-O-U-R, B, and I think</p>
<p style="text-align: right;">239</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 who were you, in your mind, thinking about?</p> <p>3 A. Our membership collectively.</p> <p>4 Q. And am I right that FMI has</p> <p>5 approximately 1,500 members?</p> <p>6 A. They did at the time that I was</p> <p>7 there.</p> <p>8 Q. Is it fair to say, then, that</p> <p>9 there generally isn't a unified view on any</p> <p>10 particular issue among all 1,500 members?</p> <p>11 A. I would say that is an accurate</p> <p>12 statement.</p> <p>13 Q. So when you're testifying</p> <p>14 generally about the members of FMI, is it</p> <p>15 fair to say you're testifying what you</p> <p>16 believe the members might -- the majority of</p> <p>17 members' position might be?</p> <p>18 MS. SUMNER: Objection.</p> <p>19 MR. BARNES: Objection.</p> <p>20 Leading.</p> <p>21 MR. MCKENNEY: Objection. Form.</p> <p>22 THE WITNESS: Certainly it would</p> <p>23 be represented by what our board</p> <p>24 approves or recommends FMI do.</p> <p>25 BY MR. WILDERS:</p>	<p style="text-align: right;">241</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 you would know it as Ball's Food Group.</p> <p>3 A. Okay. David Ball was on the</p> <p>4 board of FMI, but I do not recall any</p> <p>5 specific direct discussion with David about</p> <p>6 the issue.</p> <p>7 Q. Do you ever recall any direct</p> <p>8 discussion with David Ball or anyone else at</p> <p>9 Ball Foods about the UEP guidelines?</p> <p>10 A. Not specifically.</p> <p>11 Q. Do you recall any specific</p> <p>12 discussions about the FMI egg producing best</p> <p>13 practices with anyone at Ball's Food Group?</p> <p>14 A. Not specifically.</p> <p>15 Q. And we looked at several</p> <p>16 documents that referenced Animal Welfare</p> <p>17 Committee members. Do you recall those?</p> <p>18 A. Yes.</p> <p>19 Q. And was anyone from AWG or</p> <p>20 Consentino's or Four B/Ball's Food Group</p> <p>21 involved in any of those animal welfare</p> <p>22 committees?</p> <p>23 MR. BARNES: Objection. Form.</p> <p>24 Compound.</p> <p>25 THE WITNESS: Not that I saw in</p>

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<p style="text-align: right;">242</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 any of the documents.</p> <p>3 BY MR. WILDERS:</p> <p>4 Q. Sitting here today, do you have</p> <p>5 a recollection of anyone from those companies</p> <p>6 being involved in the Animal Welfare</p> <p>7 Committee?</p> <p>8 A. No.</p> <p>9 Q. Do you even know whether anyone</p> <p>10 at Associated Wholesale Grocers was aware of</p> <p>11 what the ultimate result of the -- let me</p> <p>12 back up.</p> <p>13 Do you know whether anyone at</p> <p>14 Associated Wholesale Grocers was aware of</p> <p>15 the -- what guidelines FMI adopted with</p> <p>16 respect to egg laying hens?</p> <p>17 MR. BARNES: You mean other than</p> <p>18 the AWG member on her board of</p> <p>19 directors? Is that your question?</p> <p>20 MR. HUTCHINSON: I'll object to</p> <p>21 the question. It calls for</p> <p>22 speculation.</p> <p>23 THE WITNESS: You want to ask</p> <p>24 the question again?</p> <p>25 BY MR. WILDERS:</p>	<p style="text-align: right;">244</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MS. SUMNER: Objection.</p> <p>3 MR. HUTCHINSON: Objection.</p> <p>4 Calls for speculation.</p> <p>5 MS. SUMNER: Foundation.</p> <p>6 BY MR. WILDERS:</p> <p>7 Q. You can answer.</p> <p>8 A. I don't know specifically.</p> <p>9 Q. Thank you.</p> <p>10 You had testified about some</p> <p>11 exhibits that were generally distributed to</p> <p>12 the membership. Do you recall those</p> <p>13 documents?</p> <p>14 A. The reports, the progress reports?</p> <p>15 Q. Yes.</p> <p>16 A. Yes.</p> <p>17 MS. SUMNER: Objection. Let's</p> <p>18 identify them by number, please.</p> <p>19 BY MR. WILDERS:</p> <p>20 Q. You had testified about the</p> <p>21 communication mechanism that FMI had with its</p> <p>22 membership?</p> <p>23 A. Yes.</p> <p>24 Q. You may have said it, maybe I</p> <p>25 missed it, but what was the mechanism for</p>
<p style="text-align: right;">243</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you know whether anyone at</p> <p>3 Associated Wholesale Grocers was aware of the</p> <p>4 best practices that FMI adopted with respect</p> <p>5 to egg laying hens?</p> <p>6 MR. HUTCHINSON: Objection.</p> <p>7 Calls for speculation on behalf of</p> <p>8 this witness.</p> <p>9 MR. BARNES: I'm going to object</p> <p>10 also. You're trying to mislead the</p> <p>11 witness. Everybody in this room knows</p> <p>12 that AWG had a member on the Board of</p> <p>13 Directors of FMI going back at least</p> <p>14 to 1999. And you're asking your</p> <p>15 question as if that didn't happen. So</p> <p>16 please don't try to mislead the</p> <p>17 witness, Mr. Wilders.</p> <p>18 MR. WILDERS: I'm not misleading</p> <p>19 the witness.</p> <p>20 BY MR. WILDERS:</p> <p>21 Q. I'm just simply asking whether</p> <p>22 anyone at AWG, to your knowledge, whether</p> <p>23 they were aware about the specific best</p> <p>24 practices that FMI adopted regarding egg</p> <p>25 laying hens?</p>	<p style="text-align: right;">245</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 communicating updates to membership?</p> <p>3 MR. BARNES: Objection. Asked</p> <p>4 and answered.</p> <p>5 THE WITNESS: We had a</p> <p>6 communication system where we weekly</p> <p>7 sent to all of our members information</p> <p>8 about all of the issues and programs</p> <p>9 that we were working on. That would</p> <p>10 have included government relations,</p> <p>11 issues management, education programs,</p> <p>12 convention, et cetera. We also made</p> <p>13 all of the information about issues</p> <p>14 such as animal welfare available on</p> <p>15 our member Web site. So those were</p> <p>16 the primary methods of communication</p> <p>17 that we used to update our members on</p> <p>18 any of the programs, policies or</p> <p>19 procedures that we had underway.</p> <p>20 BY MR. WILDERS:</p> <p>21 Q. And when those interim reports</p> <p>22 were disseminated in that manner, was it part</p> <p>23 of a larger newsletter or communication or</p> <p>24 were they sent separately?</p> <p>25 A. If it was -- if it was -- they</p>

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<p style="text-align: right;">246</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 were part of a mailing, so several pieces</p> <p>3 went into one mailing. There was a summary</p> <p>4 sheet on the front which identified the topic</p> <p>5 and a couple of sentence description of what</p> <p>6 each piece was. The Board of Directors</p> <p>7 received separate pieces, but we didn't</p> <p>8 duplicate what was in the mailing in most</p> <p>9 cases.</p> <p>10 Q. Would you have any way as part</p> <p>11 of this communications mechanisms which</p> <p>12 members read which portions of the mailing?</p> <p>13 A. No, we always wondered about</p> <p>14 that mystery.</p> <p>15 Q. If you could pull out</p> <p>16 Exhibit 22, please?</p> <p>17 A. Could you tell me the title,</p> <p>18 might be easier?</p> <p>19 Q. July 2, 2002, letter on UEP</p> <p>20 letterhead.</p> <p>21 Now, Exhibit 22 is a letter</p> <p>22 from Al Pope. Correct?</p> <p>23 A. Correct. That's what it says.</p> <p>24 Q. Was this something that UEP</p> <p>25 asked FMI to send to its members?</p>	<p style="text-align: right;">248</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 accurate copy of the letter that UEP sent</p> <p>3 you?</p> <p>4 MR. BARNES: Object to the form</p> <p>5 of the question.</p> <p>6 THE WITNESS: I can't really</p> <p>7 testify to that, but...</p> <p>8 BY MR. WILDERS:</p> <p>9 Q. Take a moment to read the</p> <p>10 letter, please.</p> <p>11 A. [Reviewing document.]</p> <p>12 MR. BURKE: Is there a Bates</p> <p>13 number on the document?</p> <p>14 MR. WILDERS: Yeah. It's</p> <p>15 FMI-1915.</p> <p>16 THE WITNESS: Okay.</p> <p>17 BY MR. WILDERS:</p> <p>18 Q. Ms. Brown, do you recall there</p> <p>19 being some debate between FMI and UEP about</p> <p>20 FMI's decision to use an independent audit</p> <p>21 firm?</p> <p>22 MS. SUMNER: Objection.</p> <p>23 THE WITNESS: Do you mean SES?</p> <p>24 BY MR. WILDERS:</p> <p>25 Q. Yes.</p>
<p style="text-align: right;">247</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. I do not recall specifically.</p> <p>3 Q. So do you know whether this</p> <p>4 communication, Exhibit 22, was ever sent to</p> <p>5 the individual UEP members?</p> <p>6 A. It's addressed to the FMI</p> <p>7 members and the NCCR members. I don't recall</p> <p>8 its dissemination.</p> <p>9 - - -</p> <p>10 (Exhibit Brown-32, 1/9/03</p> <p>11 Letter, Bates FMI-001915 - FMI-001917,</p> <p>12 was marked for identification.)</p> <p>13 - - -</p> <p>14 BY MR. WILDERS:</p> <p>15 Q. I'm going to hand you a copy of</p> <p>16 what I'm marking as Exhibit 32.</p> <p>17 A. Brown-32.</p> <p>18 Q. Is this a January 9, 2003,</p> <p>19 letter that you received from UEP?</p> <p>20 A. I see that it is.</p> <p>21 Q. And is this a document you</p> <p>22 would have kept in the ordinary course of</p> <p>23 business at FMI?</p> <p>24 A. Yes.</p> <p>25 Q. Does it appear to be a true and</p>	<p style="text-align: right;">249</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Because he mentions other firms</p> <p>3 in here. There was some discussion of that.</p> <p>4 Q. And during this January 9,</p> <p>5 2003, time frame, did UEP threaten FMI about</p> <p>6 potential legal action with respect to its</p> <p>7 use of the UEP Animal Welfare Guidelines if</p> <p>8 it didn't agree to drop its audit program?</p> <p>9 MS. SUMNER: Object to the form</p> <p>10 of the question.</p> <p>11 THE WITNESS: Not that I recall,</p> <p>12 but it's certainly implied in this</p> <p>13 letter.</p> <p>14 BY MR. WILDERS:</p> <p>15 Q. Did you, when you read this</p> <p>16 letter -- let's just specifically direct you</p> <p>17 to page 1916, and the third paragraph there</p> <p>18 where Mr. Pope, the president of UEP writes,</p> <p>19 "UEP and the egg industry have made very</p> <p>20 heavy capital investments in developing its</p> <p>21 Animal Welfare Guidelines, the audit system</p> <p>22 and Dispute Resolution process necessary for</p> <p>23 their implementation. The Guidelines and its</p> <p>24 adjuncts are the exclusive property of UEP</p> <p>25 just as its logo and seal. We would view</p>

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<p style="text-align: right;">250</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 very seriously any attempt to make use of the</p> <p>3 Guidelines, or any of the materials</p> <p>4 associated with the Guidelines, for any</p> <p>5 purpose without our consent."</p> <p>6 What did you understand that to</p> <p>7 mean when you received this letter?</p> <p>8 A. I probably walked it down to</p> <p>9 house counsel.</p> <p>10 Q. And if you return to the very</p> <p>11 last page, 1917, Mr. Pope copied someone</p> <p>12 named James Coleman at the law firm</p> <p>13 Constangy, Brooks & Smith. Do you know who</p> <p>14 that was?</p> <p>15 A. No. I know who Eric Hess was.</p> <p>16 Q. Who was Eric Hess?</p> <p>17 A. He was at SES.</p> <p>18 Q. Did you perceive UEP as putting</p> <p>19 pressure on FMI with respect to FMI's audit</p> <p>20 program?</p> <p>21 MR. BARNES: Objection.</p> <p>22 Leading.</p> <p>23 THE WITNESS: We knew that the</p> <p>24 producer community was unhappy with</p> <p>25 the development of an independent</p>	<p style="text-align: right;">252</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 as a supply and management tool among their</p> <p>3 members?</p> <p>4 MS. SUMNER: Object to the form</p> <p>5 of the question.</p> <p>6 THE WITNESS: I never heard</p> <p>7 anything like that.</p> <p>8 BY MR. WILDERS:</p> <p>9 Q. Did UEP ever disclose to you</p> <p>10 that their goal with the Animal Welfare</p> <p>11 Program was to develop a certified program</p> <p>12 that would increase egg prices in the U.S.</p> <p>13 market?</p> <p>14 MS. SUMNER: Objection to the</p> <p>15 form.</p> <p>16 THE WITNESS: I personally did</p> <p>17 not have any conversations like that.</p> <p>18 BY MR. WILDERS:</p> <p>19 Q. If UEP had told you that they</p> <p>20 were using the Animal Welfare Guidelines to</p> <p>21 reduce supply or increase price, would that</p> <p>22 have impacted FMI's review of the UEP</p> <p>23 guidelines?</p> <p>24 MS. SUMNER: Objection.</p> <p>25 THE WITNESS: It certainly would</p>
<p style="text-align: right;">251</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 third-party audit that was not</p> <p>3 connected to any of the producer</p> <p>4 organizations. We knew that they were</p> <p>5 unhappy. UEP was not the only person</p> <p>6 who expressed that they were unhappy</p> <p>7 with it.</p> <p>8 BY MR. WILDERS:</p> <p>9 Q. But this letter specifically</p> <p>10 relates to UEP. Correct?</p> <p>11 A. I know that. Thank you.</p> <p>12 Q. Was UEP ever -- did UEP ever</p> <p>13 communicate to you that it would prefer to</p> <p>14 maintain control of any audits using their</p> <p>15 Animal Welfare Guidelines?</p> <p>16 A. They definitely felt strongly</p> <p>17 about doing their own audit.</p> <p>18 Q. Did they ever tell you that the</p> <p>19 reason for that was so they could enforce</p> <p>20 compliance with the UEP Certified Program?</p> <p>21 MS. SUMNER: Objection.</p> <p>22 THE WITNESS: They may have.</p> <p>23 BY MR. WILDERS:</p> <p>24 Q. And did UEP ever tell you that</p> <p>25 they were using the Animal Welfare Guidelines</p>	<p style="text-align: right;">253</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 have impacted our relationship and</p> <p>3 conversations with UEP.</p> <p>4 BY MR. WILDERS:</p> <p>5 Q. Why?</p> <p>6 A. That would be unethical at</p> <p>7 best.</p> <p>8 Q. What would it be at worst?</p> <p>9 A. Well, my personal and</p> <p>10 professional opinion is that it could walk a</p> <p>11 fine line regarding legality.</p> <p>12 MR. MCKENNEY: Move to strike</p> <p>13 that as lay opinion.</p> <p>14 - - -</p> <p>15 (Exhibit Brown-33, 12/20/02</p> <p>16 E-mail, Bates FMI-001984, was marked</p> <p>17 for identification.)</p> <p>18 - - -</p> <p>19 BY MR. WILDERS:</p> <p>20 Q. I've handed you a copy,</p> <p>21 Ms. Brown, of Exhibit 33. Is that an e-mail</p> <p>22 that you drafted on or about December 20,</p> <p>23 2002?</p> <p>24 A. It seems so.</p> <p>25 Q. Who are you sending the e-mail</p>

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<p style="text-align: right;">254</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 here to generally?</p> <p>3 A. These are executives within</p> <p>4 member companies.</p> <p>5 Q. Were these companies -- strike</p> <p>6 that.</p> <p>7 You write here about partway</p> <p>8 through, "We understand that yesterday a</p> <p>9 number of the producer groups held a</p> <p>10 conference call to express their concern that</p> <p>11 FMI and NCCR are implementing a third party</p> <p>12 audit and to solicit funds to counter (?) the</p> <p>13 process. Part of this 'plan' includes</p> <p>14 contacting FMI members directly to express</p> <p>15 their displeasure with the animal welfare</p> <p>16 program FMI and NCCR have developed."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Was UEP one of the producer</p> <p>20 groups you were referencing here?</p> <p>21 A. I don't recall that.</p> <p>22 Q. But it would have been</p> <p>23 consistent with UEP's displeasure with FMI's</p> <p>24 decision --</p> <p>25 MR. MCKENNEY: Objection to</p>	<p style="text-align: right;">256</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. MCKENNEY: Objection. Form.</p> <p>3 Objection. Leading.</p> <p>4 MS. SUMNER: Objection. Form.</p> <p>5 THE WITNESS: Many of the</p> <p>6 producer groups were unhappy with the</p> <p>7 idea that FMI would undertake an</p> <p>8 independent third-party audit of their</p> <p>9 guidelines that our experts had</p> <p>10 recommended. It is -- you know, but I</p> <p>11 don't recall how we became aware of</p> <p>12 the call that was made or who was on</p> <p>13 it.</p> <p>14 BY MR. WILDERS:</p> <p>15 Q. If you look at the part of the</p> <p>16 e-mail that shows what documents were</p> <p>17 attached, do you see that?</p> <p>18 A. Yes. But I don't recall what</p> <p>19 they were.</p> <p>20 Q. One of them is labeled "Egg</p> <p>21 Production Audit Form.pdf."</p> <p>22 MR. MCKENNEY: Objection.</p> <p>23 Leading.</p> <p>24 THE WITNESS: I don't see it,</p> <p>25 though. I can't --</p>
<p style="text-align: right;">255</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 form. Objection. Leading.</p> <p>3 MR. WILDERS: Please let me</p> <p>4 finish my question before you make</p> <p>5 objections.</p> <p>6 MR. BARNES: It was</p> <p>7 objectionable even before you finished</p> <p>8 it.</p> <p>9 MR. WILDERS: I would appreciate</p> <p>10 the courtesy of letting you object to</p> <p>11 the question as a whole and not just a</p> <p>12 part of it.</p> <p>13 MR. BARNES: Put a question mark</p> <p>14 after that.</p> <p>15 MR. BURKE: Counsel, could we</p> <p>16 get a Bates number on the document,</p> <p>17 please?</p> <p>18 MR. WILDERS: I apologize.</p> <p>19 FMI-1984.</p> <p>20 THE WITNESS: That's an</p> <p>21 appropriate number.</p> <p>22 BY MR. WILDERS:</p> <p>23 Q. Ms. Brown, is this -- is it</p> <p>24 consistent with the fact that UEP was unhappy</p> <p>25 with FMI's decision to use an audit program?</p>	<p style="text-align: right;">257</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. GREEN: It's not attached,</p> <p>3 it's just listed.</p> <p>4 BY MR. WILDERS:</p> <p>5 Q. I'm just referring to the</p> <p>6 listing of what was attached. The</p> <p>7 attachments are here.</p> <p>8 A. So one of them was what?</p> <p>9 Q. If you look three lines up from</p> <p>10 the top, do you see where it says, Egg</p> <p>11 Production --</p> <p>12 A. Oh, I see. I see. I see. I</p> <p>13 see. A description of what's attached.</p> <p>14 Sorry, I went right over that.</p> <p>15 Q. Did you attach an egg</p> <p>16 production audit form to the e-mail?</p> <p>17 A. I'm just reading all the things</p> <p>18 that are on here. It looks as if there is a</p> <p>19 production audit form, a swine audit form and</p> <p>20 livestock slaughter audit form attached.</p> <p>21 Q. Do you think that indicates or</p> <p>22 refreshes your recollection that UEP was one</p> <p>23 of the producers who was participating in a</p> <p>24 conference call to solicit funds to counter</p> <p>25 FMI's audit process?</p>

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<p style="text-align: right;">258</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MS. SUMNER: Objection to the</p> <p>3 form.</p> <p>4 MR. MCKENNEY: Objection to</p> <p>5 form.</p> <p>6 THE WITNESS: I do not recall</p> <p>7 specifically any of the -- because I</p> <p>8 wasn't party to the call and do not</p> <p>9 know the content of the call except</p> <p>10 what is here, and I don't even recall</p> <p>11 how we became aware of this</p> <p>12 information.</p> <p>13 BY MR. WILDERS:</p> <p>14 Q. Thank you. You can set that</p> <p>15 one aside now.</p> <p>16 Ms. Brown, do you -- was there</p> <p>17 any part of FMI's Animal Welfare Guidelines</p> <p>18 that were mandatory with respect to FMI's</p> <p>19 members?</p> <p>20 A. No.</p> <p>21 Q. And --</p> <p>22 A. We not only couldn't tell the</p> <p>23 producers what to do, we really couldn't tell</p> <p>24 our members what to do either.</p> <p>25 Q. Can you explain why you didn't</p>	<p style="text-align: right;">260</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. No. We would have no idea</p> <p>3 about that at all. It was a voluntary</p> <p>4 program. They could either use it or not.</p> <p>5 - - -</p> <p>6 (Exhibit Brown-34, E-mail chain,</p> <p>7 Bates FMI-001778, was marked for</p> <p>8 identification.)</p> <p>9 - - -</p> <p>10 BY MR. WILDERS:</p> <p>11 Q. Let me hand you Exhibit 34.</p> <p>12 Can you identify this as a document -- an</p> <p>13 e-mail you wrote on August 22, 2003, to Gene</p> <p>14 Gregory?</p> <p>15 A. Yes.</p> <p>16 Q. Is this a true and accurate</p> <p>17 copy of the e-mail you wrote on that date?</p> <p>18 A. It seems to be.</p> <p>19 Q. Is this something you kept in</p> <p>20 the ordinary course of business at FMI?</p> <p>21 A. Yes.</p> <p>22 Q. Let's move down to the first</p> <p>23 e-mail in that train, that e-mail chain from</p> <p>24 Gene Gregory. It says, Karen, Just to keep</p> <p>25 you informed: Albertsons is now bidding</p>
<p style="text-align: right;">259</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 create mandatory guidelines for the members?</p> <p>3 A. Well, we didn't create the</p> <p>4 guidelines. The producers created the</p> <p>5 guidelines and the experts reviewed them and</p> <p>6 either said they were good guidelines or they</p> <p>7 needed to be improved. It's not an</p> <p>8 appropriate role for a trade association to</p> <p>9 mandate its members follow certain things.</p> <p>10 Q. So if a member wanted to buy --</p> <p>11 A. We did mandate they had to pay</p> <p>12 their dues or they couldn't be a member.</p> <p>13 Q. Fair enough. If a member</p> <p>14 wanted to buy, and just so the record is</p> <p>15 clear, the amount of the dues that members</p> <p>16 paid to FMI had nothing to do with Animal</p> <p>17 Welfare Guidelines, did they?</p> <p>18 A. No.</p> <p>19 MS. SUMNER: Objection.</p> <p>20 BY MR. WILDERS:</p> <p>21 Q. If a member wanted to -- if a</p> <p>22 member decided not to include any animal</p> <p>23 welfare guidelines in the bids to their</p> <p>24 suppliers, was that something that FMI got</p> <p>25 involved with?</p>	<p style="text-align: right;">261</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 their egg business out all across the</p> <p>3 country. This will likely result in a</p> <p>4 competitive situation that lowers our</p> <p>5 producers' prices. Albertsons has also</p> <p>6 required the Animal Care Certified Program up</p> <p>7 to this point but refused to pay the</p> <p>8 additional costs for the program. They are</p> <p>9 now saying to some bidders that they don't</p> <p>10 have to be on the Animal Care program. I</p> <p>11 believe Albertsons was one of your leaders</p> <p>12 and a member of your committee that called</p> <p>13 for the establishment of guidelines.</p> <p>14 "If other retailers follow this</p> <p>15 direction, it could have a major negative</p> <p>16 impact upon our guidelines."</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. What did you understand Mr.</p> <p>20 Gregory to be communicating to you here?</p> <p>21 A. Something he shouldn't have.</p> <p>22 My response was, "Gene -- these are terms of</p> <p>23 trade between retailers and their suppliers.</p> <p>24 It is not appropriate information to be</p> <p>25 shared or discussed with trade associations.</p>

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<p style="text-align: right;">262</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Please do not send me this type of</p> <p>3 information. Thank you, Karen."</p> <p>4 Q. Did you receive a response from</p> <p>5 Mr. Gregory?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. And did -- is that true, that</p> <p>8 FMI members were free to negotiate prices</p> <p>9 with their suppliers?</p> <p>10 A. We didn't get involved in any</p> <p>11 of that. That's their business and that's</p> <p>12 not our business. Those are as stated,</p> <p>13 individual terms of trade between retailers</p> <p>14 and suppliers and not an area that's</p> <p>15 appropriate at all for a trade association to</p> <p>16 be involved.</p> <p>17 Q. And when you talk about terms</p> <p>18 of the trade, what types of things does terms</p> <p>19 of trade encompass?</p> <p>20 A. Well, if you're a retailer,</p> <p>21 you're going to be buying products from the</p> <p>22 supplier and you have certain terms that you</p> <p>23 would require and the supplier has certain</p> <p>24 terms that they require in order to make a</p> <p>25 sale.</p>	<p style="text-align: right;">264</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 it difficult for a retailer and a supplier to</p> <p>3 engage in that type of a contract?</p> <p>4 MR. MCKENNEY: Same objection.</p> <p>5 THE WITNESS: I have no idea.</p> <p>6 BY MR. WILDERS:</p> <p>7 Q. When you received this e-mail</p> <p>8 from Mr. Gregory, did you take it as an</p> <p>9 attempt to get FMI to help enforce compliance</p> <p>10 with UEP's certified program among its --</p> <p>11 MR. MCKENNEY: Objection to</p> <p>12 form.</p> <p>13 BY MR. WILDERS:</p> <p>14 Q. -- among its own producers?</p> <p>15 MR. WILDERS: Again, please just</p> <p>16 wait.</p> <p>17 MS. SUMNER: Object to the form</p> <p>18 of the question.</p> <p>19 THE WITNESS: I took it as a</p> <p>20 very inappropriate communication from</p> <p>21 a supplier organization to me.</p> <p>22 BY MR. WILDERS:</p> <p>23 Q. Do you recall whether Mr.</p> <p>24 Gregory heeded your instruction not to send</p> <p>25 you this type of information again?</p>
<p style="text-align: right;">263</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And if a retailer was</p> <p>3 negotiating the purchase of eggs from a</p> <p>4 supplier, and they decided that they wanted</p> <p>5 eggs that were consistent with the animal</p> <p>6 welfare best practices, but the supplier</p> <p>7 produced other eggs that were not consistent</p> <p>8 with the animal welfare best practices, was</p> <p>9 the retailer free to buy eggs from that</p> <p>10 supplier?</p> <p>11 A. FMI would have nothing to do</p> <p>12 with that. We wouldn't have that kind of</p> <p>13 conversation and we would not be involved in</p> <p>14 anything that goes on between the buyer and</p> <p>15 seller.</p> <p>16 Q. And was there anything in FMI's</p> <p>17 animal welfare program that would have made</p> <p>18 it more difficult for a retailer to engage in</p> <p>19 such a purchase?</p> <p>20 MR. MCKENNEY: Objection. Form.</p> <p>21 THE WITNESS: Can you ask that</p> <p>22 one more time?</p> <p>23 BY MR. WILDERS:</p> <p>24 Q. Was there anything in FMI's</p> <p>25 animal welfare program that would have made</p>	<p style="text-align: right;">265</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. I have no idea what is in that</p> <p>3 pile. I don't know. I don't know.</p> <p>4 - - -</p> <p>5 (Exhibit Brown-35, E-mail chain,</p> <p>6 Bates FMI-002537 & FMI-002538, was</p> <p>7 marked for identification.)</p> <p>8 - - -</p> <p>9 BY MR. WILDERS:</p> <p>10 Q. Let me hand you another e-mail</p> <p>11 that's been marked Brown Exhibit 35. Is this</p> <p>12 an e-mail from, at least the first e-mail</p> <p>13 from Tim Hammonds to you on May 20, 2004?</p> <p>14 A. Yes, that's what it looks like.</p> <p>15 Q. Does this appear to be a true</p> <p>16 and correct copy of e-mail correspondence</p> <p>17 that he sent to you on that date?</p> <p>18 A. I presume so.</p> <p>19 Q. Is this an e-mail that you</p> <p>20 would have kept in your file as an ordinary</p> <p>21 business record?</p> <p>22 A. Yes.</p> <p>23 Q. And kept in the ordinary course</p> <p>24 of business?</p> <p>25 A. Right. Yes.</p>

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<p style="text-align: right;">266</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MS. ANDERSON: Counsel, this is</p> <p>3 Exhibit 35, right?</p> <p>4 MR. WILDERS: It is. And it's</p> <p>5 FMI-2537.</p> <p>6 MS. ANDERSON: Sorry, I thought</p> <p>7 you said 25.</p> <p>8 MR. WILDERS: If I did, I</p> <p>9 apologize.</p> <p>10 BY MR. WILDERS:</p> <p>11 Q. So if we look at the very first</p> <p>12 e-mail on May 20, 2004, from</p> <p>13 karenconrad@unitedegg.com to Tim Hammonds.</p> <p>14 Do you see that?</p> <p>15 A. I see that.</p> <p>16 Q. Do you know who Karen Conrad</p> <p>17 was?</p> <p>18 A. I don't remember.</p> <p>19 Q. It reads, "Hi Tim, Thanks for</p> <p>20 meeting with Gene and I last week."</p> <p>21 It says, "UEP produces a</p> <p>22 newsletter for its members called 'United</p> <p>23 Voices'. It is a bi-monthly publication that</p> <p>24 is mailed out, put out on our website and</p> <p>25 sent via email to our members.</p>	<p style="text-align: right;">268</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 to draft something. It would be best if it</p> <p>3 was signed by you and Terrie."</p> <p>4 Q. What did you -- what did you</p> <p>5 mean when you wrote "implied pressure"?</p> <p>6 A. Well, pressuring them to go in</p> <p>7 a certain direction.</p> <p>8 Q. What do you mean pressure --</p> <p>9 when you say "them," do you mean the egg</p> <p>10 producers, the members of UEP?</p> <p>11 A. Yes.</p> <p>12 Q. So you understood United Egg</p> <p>13 Producers to be asking FMI to write something</p> <p>14 to pressure the producers to stay on or join</p> <p>15 the Animal Care Certified Program of UEP?</p> <p>16 A. Correct.</p> <p>17 MR. MCKENNEY: Objection to</p> <p>18 form. Mischaracterizes the testimony,</p> <p>19 the document.</p> <p>20 THE WITNESS: Correct.</p> <p>21 BY MR. WILDERS:</p> <p>22 Q. That was something that you</p> <p>23 were not -- is that something you were</p> <p>24 comfortable with?</p> <p>25 A. No.</p>
<p style="text-align: right;">267</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 "Would you be willing to write</p> <p>3 a short (1/2 page) article for us relating to</p> <p>4 why producers should 'stay the course' and</p> <p>5 continue to provide leadership and support</p> <p>6 for UEP's Animal Care Certified program?</p> <p>7 Also something regarding the continued use of</p> <p>8 the seal on our egg cartons for informing</p> <p>9 customers."</p> <p>10 Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. What did you understand -- let</p> <p>13 me back up.</p> <p>14 Mr. Hammonds then forwarded the</p> <p>15 e-mail to you on the same day, May 20, 2004,</p> <p>16 didn't he?</p> <p>17 A. Yes, I see that.</p> <p>18 Q. What did you understand United</p> <p>19 Egg to be asking here?</p> <p>20 A. Well, my response was "We can</p> <p>21 draft something saying we appreciate their</p> <p>22 efforts and support of their customers...,"</p> <p>23 meaning retailers, "...but we can't tell them</p> <p>24 to 'stay the course' [implied pressure] or</p> <p>25 'endorse' their labeling program. I am happy</p>	<p style="text-align: right;">269</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And, again, why not?</p> <p>3 A. I think it skirts the edge of</p> <p>4 what's legal.</p> <p>5 MS. SUMNER: Objection. Move to</p> <p>6 strike that as a lay opinion. She's</p> <p>7 not a lawyer.</p> <p>8 THE WITNESS: So if I change it</p> <p>9 and say it skirts the edge of</p> <p>10 legality? I revise my response. It</p> <p>11 skirts the edge of legality --</p> <p>12 MR. MCKENNEY: Same objection.</p> <p>13 THE WITNESS: -- at a minimum.</p> <p>14 MS. SUMNER: Same objection.</p> <p>15 Moves to strike as a lay opinion.</p> <p>16 MR. WILDERS: We'll let the</p> <p>17 judge decide if the jury gets to hear</p> <p>18 it. Okay?</p> <p>19 BY MR. WILDERS:</p> <p>20 Q. Did UE -- do you understand</p> <p>21 whether there's a difference between UEP's</p> <p>22 Animal Welfare Guidelines and the UEP</p> <p>23 Certified Program?</p> <p>24 A. I couldn't tell you in detail.</p> <p>25 I know the program had different components,</p>

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<p style="text-align: right;">270</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 and one component was a certified label. I</p> <p>3 don't know if that's what you're referring</p> <p>4 to.</p> <p>5 Q. Did FMI ever endorse the UEP</p> <p>6 certified label?</p> <p>7 A. No.</p> <p>8 Q. So the testimony you've been</p> <p>9 giving about, you know, FMI Scientific</p> <p>10 Committee reviewing, potentially endorsing</p> <p>11 some of the Animal Welfare Guidelines, did</p> <p>12 that relate to the guidelines themselves or</p> <p>13 the guidelines and the UEP certified label?</p> <p>14 MR. MCKENNEY: Objection to</p> <p>15 form.</p> <p>16 THE WITNESS: That related only</p> <p>17 to the guidelines. It was our belief</p> <p>18 that industry devising its own label</p> <p>19 for a program that it developed and</p> <p>20 then audited itself had a lot of</p> <p>21 issues regarding credibility.</p> <p>22 - - -</p> <p>23 (Exhibit Brown-36, 10/18/04</p> <p>24 E-mail, Bates FMI-003137, was marked</p> <p>25 for identification.)</p>	<p style="text-align: right;">272</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 sending to you at FMI?</p> <p>3 A. No --</p> <p>4 MS. SUMNER: Objection to form.</p> <p>5 THE WITNESS: -- I do not.</p> <p>6 BY MR. WILDERS:</p> <p>7 Q. Why not?</p> <p>8 A. It's not information that</p> <p>9 should be discussed or shared with the trade</p> <p>10 association.</p> <p>11 Q. And this e-mail -- you're</p> <p>12 holding another exhibit there. Could you</p> <p>13 identify it by number for the record and the</p> <p>14 jury, please?</p> <p>15 A. Okay. We've got -- I'm holding</p> <p>16 two things. I'm holding Brown-34 001778 and</p> <p>17 Brown-36 003137. I just want to check the</p> <p>18 date.</p> <p>19 Q. What did that -- what did that</p> <p>20 reveal to you?</p> <p>21 A. That he didn't listen to my --</p> <p>22 didn't understand my first e-mail which said</p> <p>23 don't send me this type of information again.</p> <p>24 Q. Or perhaps he understood it and</p> <p>25 he willfully ignored it?</p>
<p style="text-align: right;">271</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 BY MR. WILDERS:</p> <p>4 Q. Let me hand you another e-mail</p> <p>5 from Mr. Gregory to you that I'm marking</p> <p>6 Brown-36. Is this an e-mail that you</p> <p>7 received from Mr. Gregory on October 18,</p> <p>8 2004?</p> <p>9 A. It appears so.</p> <p>10 Q. And does it appear to be a true</p> <p>11 and accurate copy of the communication he</p> <p>12 sent to you on that date?</p> <p>13 A. Yes.</p> <p>14 Q. And is this an e-mail that you</p> <p>15 would have kept in the ordinary course of</p> <p>16 business while at FMI?</p> <p>17 A. Yes.</p> <p>18 Q. Mr. Gregory -- and this e-mail</p> <p>19 on October 18, 2004, Mr. Gregory writes,</p> <p>20 "Karen, The egg industry is now experiencing</p> <p>21 severe low egg prices. Prices far below the</p> <p>22 costs of production." Let's just stop right</p> <p>23 there for a second.</p> <p>24 Do you think that was an</p> <p>25 appropriate message for Mr. Gregory to be</p>	<p style="text-align: right;">273</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MS. SUMNER: Objection to form.</p> <p>3 MS. ANDERSON: Objection.</p> <p>4 MR. MCKENNEY: Objection.</p> <p>5 THE WITNESS: I don't know the</p> <p>6 answer to that question.</p> <p>7 BY MR. WILDERS:</p> <p>8 Q. He goes on to write in the</p> <p>9 second paragraph, "Egg producers made money</p> <p>10 in 2003 and the first half of 2004. Like</p> <p>11 farmers do - they expanded their flock size</p> <p>12 and are now producing too many eggs for the</p> <p>13 market."</p> <p>14 Did I read that correctly?</p> <p>15 A. Uh-huh. Yes, you did.</p> <p>16 Q. In your experience, in the</p> <p>17 retail sector if there are too many eggs for</p> <p>18 the market, what kind of impact does that</p> <p>19 have on price?</p> <p>20 MS. SUMNER: Objection.</p> <p>21 THE WITNESS: Paul Samuelson in</p> <p>22 Econ 101 says if there's a large</p> <p>23 supply, prices go down; and if there</p> <p>24 is a short supply, prices go up.</p> <p>25 BY MR. WILDERS:</p>

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<p style="text-align: right;">274</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And then in the fourth</p> <p>3 paragraph Mr. Gregory writes, "We need to</p> <p>4 tell you that we are having difficulty</p> <p>5 keeping producers committed to the Animal</p> <p>6 Care Certified program unless their retail</p> <p>7 customer requires that their eggs be produced</p> <p>8 by Animal Care Certified companies."</p> <p>9 Did I read that correctly?</p> <p>10 A. Yes.</p> <p>11 Q. Did you have an understanding</p> <p>12 as to why Mr. Gregory was writing you an</p> <p>13 e-mail that first talked about severe low egg</p> <p>14 prices, too many eggs for the market and then</p> <p>15 directly going into -- going into the fact</p> <p>16 that he was having difficulty keeping people</p> <p>17 on the Animal Care Certified Program?</p> <p>18 MS. SUMNER: Object to the form.</p> <p>19 THE WITNESS: I have no idea,</p> <p>20 but I think maybe it would have been</p> <p>21 valuable to have some of these</p> <p>22 communications reviewed by counsel</p> <p>23 before sending.</p> <p>24 MS. SUMNER: Move to strike the</p> <p>25 testimony.</p>	<p style="text-align: right;">276</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Certified Program?</p> <p>3 A. Never.</p> <p>4 Q. Do you know if you responded to</p> <p>5 Mr. Gregory?</p> <p>6 A. I don't recall.</p> <p>7 Q. Would this have been the kind</p> <p>8 of letter that you would typically send to</p> <p>9 legal counsel to deal with?</p> <p>10 A. I would definitely send it to</p> <p>11 legal counsel.</p> <p>12 Q. The last paragraph, third to</p> <p>13 the last paragraph here says, second</p> <p>14 sentence, "I think it is critically important</p> <p>15 that we work together to keep this good</p> <p>16 program going. Any message from you that we</p> <p>17 could convey to our members would certainly</p> <p>18 help."</p> <p>19 Did you -- did I read that</p> <p>20 correctly?</p> <p>21 A. I'm sorry. Did I --</p> <p>22 Q. I'll let the record reflect</p> <p>23 itself.</p> <p>24 It says, "Any help you can</p> <p>25 provide in keeping your members committed to</p>
<p style="text-align: right;">275</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. WILDERS:</p> <p>3 Q. He also goes on to write in the</p> <p>4 sixth paragraph, sixth paragraph, "We are</p> <p>5 also hearing from some of your members that</p> <p>6 they are no longer requiring Animal Care</p> <p>7 Certified eggs so you may be losing some of</p> <p>8 your member support for the program that we</p> <p>9 all worked on for so long and hard."</p> <p>10 What did you understand him to</p> <p>11 be communicating to you there?</p> <p>12 A. Make their problem our problem.</p> <p>13 Q. What do you mean by "their</p> <p>14 problem"?</p> <p>15 A. FMI had no role in what was</p> <p>16 going on within UEP's membership as regard to</p> <p>17 these issues mentioned in this e-mail.</p> <p>18 Q. And did you, after receiving</p> <p>19 this letter, do anything to, as he puts it,</p> <p>20 provide in keeping your members committed to</p> <p>21 the program?</p> <p>22 A. Probably not.</p> <p>23 Q. And while you were at FMI, did</p> <p>24 you take any action to try to force members</p> <p>25 into only buying eggs consistent with the UEP</p>	<p style="text-align: right;">277</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 the program would help us. I think it is</p> <p>3 critically important that we work together to</p> <p>4 keep this good program going. Any message</p> <p>5 from you that we could convey to our members</p> <p>6 would certainly help."</p> <p>7 Did I read that right?</p> <p>8 A. Yes.</p> <p>9 Q. And when you -- reading this</p> <p>10 e-mail as a whole, did you take this as</p> <p>11 pressure from Gene Gregory to force FMI</p> <p>12 members to buy eggs on the animal welfare</p> <p>13 certified program?</p> <p>14 MS. SUMNER: Objection.</p> <p>15 Leading.</p> <p>16 THE WITNESS: This e-mail is</p> <p>17 asking FMI to do something in an area</p> <p>18 that was inappropriate and FMI was not</p> <p>19 going to do.</p> <p>20 MR. WILDERS: Could I get some</p> <p>21 stickers from you? Off the record.</p> <p>22 - - -</p> <p>23 VIDEOGRAPHER: Off the record at</p> <p>24 4:58.</p> <p>25 - - -</p>

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<p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 (A recess was taken.)</p> <p>3 - - -</p> <p>4 VIDEOGRAPHER: Back on the</p> <p>5 record at 4:59.</p> <p>6 - - -</p> <p>7 (Exhibit Brown-37, E-mail chain,</p> <p>8 Bates UE0762934, was marked for</p> <p>9 identification.)</p> <p>10 - - -</p> <p>11 BY MR. WILDERS:</p> <p>12 Q. Ms. Brown, I handed you a copy</p> <p>13 of Exhibit 37 to your deposition. You were</p> <p>14 asked some questions --</p> <p>15 MS. SUMNER: I'm going to object</p> <p>16 to the fact that this is a</p> <p>17 confidential document and --</p> <p>18 MR. WILDERS: She's a recipient</p> <p>19 of the e-mail.</p> <p>20 MS. SUMNER: But under the</p> <p>21 protective order you have to have her</p> <p>22 sign it before you can show it to her.</p> <p>23 MR. WILDERS: I don't think so.</p> <p>24 MR. RANDALL: You showed her</p> <p>25 documents that were confidential. You</p>	<p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 the witness not signed the protective</p> <p>3 order? Is that an issue? Because if</p> <p>4 she hasn't, we're not talking about</p> <p>5 this anymore.</p> <p>6 MR. WILDERS: We're talking</p> <p>7 about it in this deposition. Do</p> <p>8 whatever you need to do.</p> <p>9 MR. BURKE: Is there a Bates</p> <p>10 number?</p> <p>11 MR. WILDERS: It's UE 762934.</p> <p>12 MS. SUMNER: You know what,</p> <p>13 before you read this, Ms. Brown, could</p> <p>14 you put it down? My client produced</p> <p>15 this document. And, Mr. Green, it is</p> <p>16 under protective order. And until I</p> <p>17 have a chance to review it, I suggest</p> <p>18 we go off the record. We're not</p> <p>19 agreeing to waive the confidentiality</p> <p>20 right now.</p> <p>21 THE WITNESS: I'm cc'd on the</p> <p>22 document.</p> <p>23 MS. SUMNER: We'll take a moment</p> <p>24 to review that.</p> <p>25 MS. ANDERSON: There is a court</p>
279	281
<p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 can't pick and choose.</p> <p>3 BY MR. WILDERS:</p> <p>4 Q. Ms. Brown --</p> <p>5 MS. SUMNER: They're our</p> <p>6 documents and under the protective</p> <p>7 order --</p> <p>8 MR. WILDERS: The protective</p> <p>9 order does not require you to sign a</p> <p>10 confidentiality if you're a recipient.</p> <p>11 MS. SUMNER: That's actually not</p> <p>12 true.</p> <p>13 MR. WILDERS: You can take it up</p> <p>14 with the judge.</p> <p>15 MS. SUMNER: No. You're</p> <p>16 violating the protective order. This</p> <p>17 is my client's document. This is an</p> <p>18 instance, unlike the one you brought</p> <p>19 up before, where we are not waiving it</p> <p>20 and we do have the right to object.</p> <p>21 MR. PATTON: You're keeping out</p> <p>22 evidence is what you're doing.</p> <p>23 MR. WILDERS: Your objection is</p> <p>24 noted. Let the record reflect --</p> <p>25 MS. ANDERSON: I'm sorry, has</p>	<p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 order in place.</p> <p>3 MR. WILDERS: She received it.</p> <p>4 MS. SUMNER: Unfortunately</p> <p>5 that's not how the protective order</p> <p>6 reads and I'm sure --</p> <p>7 MR. GREEN: Is there a copy of</p> <p>8 the protective order around?</p> <p>9 MS. SUMNER: I do have a copy of</p> <p>10 the protective order in the other</p> <p>11 room.</p> <p>12 MR. WILDERS: Off the record.</p> <p>13 VIDEOGRAPHER: Off the record.</p> <p>14 - - -</p> <p>15 (A recess was taken.)</p> <p>16 - - -</p> <p>17 VIDEOGRAPHER: Here begins tape</p> <p>18 four in the videotape deposition of</p> <p>19 Karen Brown. We're back on the record</p> <p>20 at 5:07.</p> <p>21 MS. SUMNER: We understand that</p> <p>22 counsel has not had this witness sign</p> <p>23 Exhibit A to the confidentiality</p> <p>24 agreement in either the MDL or the</p> <p>25 Kansas litigation, and this is a</p>

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<p style="text-align: right;">282</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 document that was marked by UEP as</p> <p>3 confidential and as such falls within</p> <p>4 the disclosure limitations in the</p> <p>5 protective order. However, for</p> <p>6 purposes of this witness, we are</p> <p>7 prepared under paragraph 6, paragraph</p> <p>8 6(B)(12) which refers to treatment of</p> <p>9 confidential information, to agree</p> <p>10 that this witness can be shown this</p> <p>11 confidential document without</p> <p>12 violating the protective order.</p> <p>13 MR. WILDERS: Thank you.</p> <p>14 BY MR. WILDERS:</p> <p>15 Q. Ms. Brown, I apologize for the</p> <p>16 interruption.</p> <p>17 Before you take a look at the</p> <p>18 document again, do you recall your testimony</p> <p>19 on direct examination that -- about a 100</p> <p>20 percent rule that UEP was enacting as part of</p> <p>21 its UEP Certified Program?</p> <p>22 A. I recall that discussion here.</p> <p>23 Q. And was it your testimony, I</p> <p>24 believe, that you weren't quite certain what</p> <p>25 was meant by the 100 percent rule?</p>	<p style="text-align: right;">284</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 'United Egg Producers Certified' (formerly</p> <p>3 Animal Care Certified) program. This group</p> <p>4 represents approximately 20% of all layers in</p> <p>5 the industry and these people are UEP</p> <p>6 members.</p> <p>7 "Two opportunities will be</p> <p>8 provided to this group over the next couple</p> <p>9 of months for them to convince UEP's Board</p> <p>10 that we should get out of the management of</p> <p>11 an animal husbandry program or do away with</p> <p>12 the 100% rule. To remind you, the 100% rule</p> <p>13 requires a company to implement our</p> <p>14 guidelines on 100% of their production</p> <p>15 facilities regardless of where or how they</p> <p>16 market...eggs."</p> <p>17 Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. And does that refresh your</p> <p>20 recollection as to what you understood the</p> <p>21 100 percent rule to mean while you were at</p> <p>22 FMI?</p> <p>23 MR. MCKENNEY: Objection to</p> <p>24 form.</p> <p>25 THE WITNESS: I understood that</p>
<p style="text-align: right;">283</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MS. SUMNER: Objection.</p> <p>3 Misstates her testimony.</p> <p>4 THE WITNESS: That was my</p> <p>5 statement, that I didn't understand at</p> <p>6 the time it was asked.</p> <p>7 BY MR. WILDERS:</p> <p>8 Q. Thank you. I didn't mean to</p> <p>9 interrupt you. I'm sorry.</p> <p>10 Could you look now at</p> <p>11 Exhibit 37. You can turn it over now. If</p> <p>12 you would look, is this an e-mail that Mr.</p> <p>13 Hammonds sent to Gene Gregory and copying you</p> <p>14 on October 28, 2005?</p> <p>15 A. I see that.</p> <p>16 Q. And it includes an e-mail from</p> <p>17 Mr. Gregory to Tim Hammonds and Al Pope on</p> <p>18 the same date. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Let me just read the first part</p> <p>21 and part of the second paragraph here. "Tim,</p> <p>22 There is a sector within the egg industry</p> <p>23 (those primarily in egg breaking/egg</p> <p>24 products) that would either like for UEP to</p> <p>25 water down or completely eliminate the</p>	<p style="text-align: right;">285</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 there was a sector or -- of the UEP</p> <p>3 membership or there were some</p> <p>4 companies within the UEP membership</p> <p>5 that wanted to determine which of</p> <p>6 their animals were humanely treated</p> <p>7 according to the guidelines based on</p> <p>8 what were the egg ended up. And the</p> <p>9 way I understood it was that shell</p> <p>10 eggs which go in cartons for consumers</p> <p>11 to buy were the eggs that some</p> <p>12 companies that were in the business of</p> <p>13 two kinds of egg laying operations</p> <p>14 wanted those eggs to be under the UEP</p> <p>15 program. Those animals. Animals who</p> <p>16 were laying eggs for breaking</p> <p>17 operation which were basically going</p> <p>18 to end up in products manufactured by</p> <p>19 other companies such as cereal</p> <p>20 companies or cookie companies, et</p> <p>21 cetera, that those animals did not --</p> <p>22 they did not want them to be under the</p> <p>23 UEP guidelines. They did not want</p> <p>24 them to be handled as humanely under</p> <p>25 the UEP guidelines. That's what I</p>

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<p style="text-align: right;">286</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 understand the 100 percent rule to be.</p> <p>3 I just didn't understand it as a</p> <p>4 separate term.</p> <p>5 BY MR. WILDERS:</p> <p>6 Q. So when you testified earlier</p> <p>7 about what FMI's position would be on that</p> <p>8 issue, that was the understanding that -- the</p> <p>9 definition that you were applying to the 100</p> <p>10 percent rule?</p> <p>11 A. That's what I understood it to</p> <p>12 be after reading further into the document.</p> <p>13 Q. And did you know that, in fact,</p> <p>14 UEP was using the 100 percent rule as a means</p> <p>15 to prohibit their -- some of their members</p> <p>16 from selling certified eggs if they sold</p> <p>17 non-certified eggs to a customer?</p> <p>18 MS. SUMNER: Object to the form</p> <p>19 of the question.</p> <p>20 MR. MCKENNEY: Objection to</p> <p>21 form. Misstates the record.</p> <p>22 MS. SUMNER: Lack of foundation.</p> <p>23 THE WITNESS: I don't know about</p> <p>24 that part. Our focus was really on</p> <p>25 how the animals were being handled.</p>	<p style="text-align: right;">288</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 of the program altogether?</p> <p>3 MS. SUMNER: Objection to the</p> <p>4 form of the question. Calls for</p> <p>5 impermissible opinion testimony.</p> <p>6 She's a fact witness.</p> <p>7 THE WITNESS: We were not in the</p> <p>8 business of saying who should be</p> <p>9 kicked out of any program. Our focus</p> <p>10 was on having animals being raised for</p> <p>11 food being treated humanely and</p> <p>12 improving that system for all animals.</p> <p>13 BY MR. WILDERS:</p> <p>14 Q. Fair enough. If you were to</p> <p>15 look at Exhibit 37 again, the e-mail from Mr.</p> <p>16 Gregory to Mr. Hammonds, Mr. Gregory at UEP</p> <p>17 to Mr. Hammonds at FMI, one of the latter</p> <p>18 sentences, third from the bottom says, "My</p> <p>19 reason for writing you at this time is to ask</p> <p>20 if you would be willing to write me a letter</p> <p>21 stating, among any ideas you may have, the</p> <p>22 importance of UEP maintaining and managing</p> <p>23 the 'United Egg Producers certified'</p> <p>24 program."</p> <p>25 Did I read that right?</p>
<p style="text-align: right;">287</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 From our perspective, we believed that</p> <p>3 regardless of where the product ends</p> <p>4 up, the animals should all be treated</p> <p>5 as humanely as possible. So that was</p> <p>6 our position.</p> <p>7 BY MR. WILDERS:</p> <p>8 Q. If a producer had customers who</p> <p>9 wanted to buy eggs that were produced under</p> <p>10 the guidelines and they had a customer that</p> <p>11 wanted to buy eggs that were not produced</p> <p>12 under the guidelines, that wasn't something</p> <p>13 that FMI got involved with, was it?</p> <p>14 A. That's correct. FMI had no</p> <p>15 business getting involved in that kind of a</p> <p>16 discussion. Those are terms of trade between</p> <p>17 producers and -- I mean between retailers and</p> <p>18 suppliers and not an area that FMI got</p> <p>19 involved in.</p> <p>20 Q. And from an animal welfare</p> <p>21 perspective, if you have a producer that has</p> <p>22 this split customer base, is it better or</p> <p>23 worse from an animal welfare perspective to</p> <p>24 allow them to at least sell some of their</p> <p>25 eggs under the guidelines or to kick them out</p>	<p style="text-align: right;">289</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And did FMI provide UEP with</p> <p>4 that letter?</p> <p>5 A. Not to my knowledge. And Mr.</p> <p>6 Hammonds specifically states that, implies</p> <p>7 that he's not going to do anything else.</p> <p>8 Q. Where do you see that?</p> <p>9 A. I see that in his response</p> <p>10 which says, "Gene, I think we have gone as</p> <p>11 far as associations should at this point. I</p> <p>12 believe our support for your program is clear</p> <p>13 and our key members who have the real</p> <p>14 standing here have given you specific letters</p> <p>15 of support. I'm reluctant to insert us any</p> <p>16 further into your own governance issues.</p> <p>17 This is in no way a lack of strong and</p> <p>18 continuing support on our part, it's just a</p> <p>19 reflection of our view of governance for</p> <p>20 associations working with their own</p> <p>21 membership."</p> <p>22 Q. Now, did you have an</p> <p>23 understanding of how UEP's governance</p> <p>24 differed from FMI's governance?</p> <p>25 MS. SUMNER: Object to the form</p>

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<p style="text-align: right;">290</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 of the question.</p> <p>3 THE WITNESS: Only to the extent</p> <p>4 that they are a cooperative and we are</p> <p>5 a trade association, so different</p> <p>6 structure.</p> <p>7 BY MR. WILDERS:</p> <p>8 Q. Is Mr. Hammonds -- is this a</p> <p>9 true and accurate reflection of the e-mail</p> <p>10 that you received in October 28 of 2005?</p> <p>11 A. I assume so.</p> <p>12 Q. You had no reason to disagree</p> <p>13 that it is not. Correct?</p> <p>14 A. I have no reason to disagree</p> <p>15 that it is not.</p> <p>16 - - -</p> <p>17 (Exhibit Brown-38, E-mail chain,</p> <p>18 Bates FMI-001461, was marked for</p> <p>19 identification.)</p> <p>20 - - -</p> <p>21 BY MR. WILDERS:</p> <p>22 Q. Let me hand you Exhibit 38.</p> <p>23 Will you confirm for me that this is an</p> <p>24 e-mail you received on November 12, 2004?</p> <p>25 For the record this is Bates FMI-1461.</p>	<p style="text-align: right;">292</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 animal welfare experts had endorsed.</p> <p>3 Q. Would this have been during the</p> <p>4 period when there was sort of a lack of</p> <p>5 participation in the Animal Welfare Audit</p> <p>6 Program by egg producers?</p> <p>7 MS. SUMNER: Object to the form</p> <p>8 of the question.</p> <p>9 THE WITNESS: There was a</p> <p>10 declining interest in using the SES</p> <p>11 audit program at this time, yes.</p> <p>12 BY MR. WILDERS:</p> <p>13 Q. And Mr. Hess writes here to you</p> <p>14 and to Ms. Dort and also to</p> <p>15 Dr. Hollingsworth, "I have attached a</p> <p>16 brochure I stumbled across yesterday while I</p> <p>17 was working on the national Ag Homeland</p> <p>18 Security program we are involved with. The</p> <p>19 hyperlink to the website I pulled the</p> <p>20 brochure off of is below. Please pay</p> <p>21 particular attention to the final paragraph</p> <p>22 on page 2. It may explain why the egg</p> <p>23 producers are not interested in AWAP. Take</p> <p>24 care."</p> <p>25 What was AWAP, first of all?</p>
<p style="text-align: right;">291</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. [Reviewing document.]</p> <p>3 Q. I'm sorry, did you have a</p> <p>4 chance to look at it or are you still</p> <p>5 reading?</p> <p>6 A. I have.</p> <p>7 Q. Is this an e-mail you received</p> <p>8 from a Terrie Dort on November 12, 2004?</p> <p>9 A. It appears to be.</p> <p>10 Q. Does it appear to be a true and</p> <p>11 accurate copy of that communication?</p> <p>12 A. Yes.</p> <p>13 Q. Is this an e-mail that you</p> <p>14 would have kept in the ordinary course of</p> <p>15 business while at FMI?</p> <p>16 A. Yes.</p> <p>17 Q. At the bottom of the e-mail</p> <p>18 there is an earlier e-mail from the same date</p> <p>19 from Eric Hess, and I think you said earlier,</p> <p>20 but who was Mr. Hess?</p> <p>21 A. He was with SES, which was the</p> <p>22 program that -- the auditing firm that was</p> <p>23 developing an audit program to coordinate the</p> <p>24 audits of the guidelines, the animal welfare</p> <p>25 guidelines, producer guidelines that our</p>	<p style="text-align: right;">293</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Animal Welfare Auditing</p> <p>3 Program, I think.</p> <p>4 Q. What do you -- do you recall</p> <p>5 generally what this was about?</p> <p>6 A. No.</p> <p>7 Q. Well, in the next e-mail Terrie</p> <p>8 writes to you, "Karen - how many times did we</p> <p>9 tell Gene that we could not endorse their</p> <p>10 program."</p> <p>11 Who do you think she was</p> <p>12 referring to there?</p> <p>13 A. She was referring to</p> <p>14 Mr. Gregory at UEP.</p> <p>15 Q. And she says, "This is really</p> <p>16 outrageous."</p> <p>17 What did you understand her to</p> <p>18 mean when she wrote that?</p> <p>19 A. Well, I don't know what was in</p> <p>20 the brochure, so I don't know specifically</p> <p>21 what she was referring to.</p> <p>22 Q. Do you think that this is --</p> <p>23 A. I don't recall what was in the</p> <p>24 brochure.</p> <p>25 Q. Is it consistent with the other</p>

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<p style="text-align: right;">294</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 communications that we looked at that, that</p> <p>3 UEP was attempting to push its own</p> <p>4 certification program?</p> <p>5 MR. MCKENNEY: Objection to</p> <p>6 form.</p> <p>7 MS. SUMNER: Objection to the</p> <p>8 form of the question.</p> <p>9 MR. WILDERS: Let me withdraw</p> <p>10 that question. That really was a bad</p> <p>11 question.</p> <p>12 BY MR. WILDERS:</p> <p>13 Q. Was there ever a period of time</p> <p>14 while you were at FMI when UEP was</p> <p>15 misrepresenting that FMI -- let me back up.</p> <p>16 Was there ever a time when you</p> <p>17 were at FMI, that you can recall, where UEP</p> <p>18 was representing that FMI had endorsed their</p> <p>19 certified program?</p> <p>20 A. I don't recall specifically.</p> <p>21 Q. If you could pull out</p> <p>22 Exhibit 31, please. Do you recall being</p> <p>23 asked some questions about Exhibit 31 when</p> <p>24 Ms. Sumner was questioning you?</p> <p>25 A. Yes, but I don't remember what</p>	<p style="text-align: right;">296</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 VIDEOGRAPHER: We're back on the</p> <p>3 record at 5:38.</p> <p>4 BY MR. WILDERS:</p> <p>5 Q. Ms. Brown, I just have a small</p> <p>6 set of questions left for you and I'll turn</p> <p>7 it over to someone else.</p> <p>8 Let me hand you Exhibit 41. I</p> <p>9 think Ms. Sumner wants to make a record</p> <p>10 before I ask you a couple of questions.</p> <p>11 MR. BARNES: Would you speak up,</p> <p>12 Counsel?</p> <p>13 MR. WILDERS: I'm sorry. Yes.</p> <p>14 I handed the Exhibit 41 to the</p> <p>15 witness. It's UE295185.</p> <p>16 MS. SUMNER: This is a document</p> <p>17 that has been produced as -- by UEP</p> <p>18 with a confidential designation.</p> <p>19 There has been a request that UEP</p> <p>20 waive with respect to this witness.</p> <p>21 UEP is prepared to do that under</p> <p>22 paragraph 12 of the protective order</p> <p>23 which limits the waiver to this</p> <p>24 witness and this witness only.</p> <p>25 BY MR. WILDERS:</p>
<p style="text-align: right;">295</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 they were.</p> <p>3 Q. She had asked you some</p> <p>4 questions about something called backfilling.</p> <p>5 A. Oh.</p> <p>6 Q. Do you recall that?</p> <p>7 A. Yes, I recall the question.</p> <p>8 Q. Do you know whether the FMI</p> <p>9 Scientific Advisory Committee ever took an</p> <p>10 opinion on the concept of backfilling?</p> <p>11 A. I don't recall. As I stated</p> <p>12 before, I am not familiar with the term. I</p> <p>13 don't remember it being discussed in our</p> <p>14 meetings by that term. I didn't see it on</p> <p>15 any documents today that were shown to me as</p> <p>16 summaries of those meetings.</p> <p>17 MR. WILDERS: Let's go off the</p> <p>18 record for a second. I think I might</p> <p>19 be finished. Let me just take a quick</p> <p>20 look.</p> <p>21 VIDEOGRAPHER: Off the record at</p> <p>22 5:24.</p> <p>23 - - -</p> <p>24 (A recess was taken.)</p> <p>25 - - -</p>	<p style="text-align: right;">297</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Exhibit 38, is this a letter</p> <p>3 from Frank Bryant at SES to Gene Gregory?</p> <p>4 MS. SUMNER: Is this 38 or 41?</p> <p>5 THE WITNESS: 41.</p> <p>6 MR. WILDERS: I'm sorry, I</p> <p>7 skipped some exhibits. It's 38.</p> <p>8 MR. BARNES: We have a 38.</p> <p>9 MR. WILDERS: It's Exhibit 39.</p> <p>10 MR. BARNES: Not 41?</p> <p>11 MR. WILDERS: 39. Thank you.</p> <p>12 Sorry for the confusion. Just hand</p> <p>13 that back to me.</p> <p>14 - - -</p> <p>15 (Exhibit Brown-39, 9/22/03</p> <p>16 Letter, Bates UE295185, was marked for</p> <p>17 identification.)</p> <p>18 - - -</p> <p>19 BY MR. WILDERS:</p> <p>20 Q. It's getting late for all of</p> <p>21 us.</p> <p>22 Ms. Brown, my question was, is</p> <p>23 this a September 22, 2003, letter from Frank</p> <p>24 Bryant at SES to Gene Gregory at UEP?</p> <p>25 A. It appears to be.</p>

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<p style="text-align: right;">298</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. You note at the bottom, is this</p> <p>3 a letter that you were cc'd on as senior vice</p> <p>4 president at FMI?</p> <p>5 A. Yes.</p> <p>6 Q. Take a moment, do you recall</p> <p>7 receiving this letter?</p> <p>8 A. No.</p> <p>9 Q. If you were to look there at</p> <p>10 the very last paragraph.</p> <p>11 A. Yes.</p> <p>12 Q. Let's start with the first</p> <p>13 paragraph, it says, "Dear Mr. Gregory, I</p> <p>14 would like to clarify several issues relative</p> <p>15 to the Animal Welfare Audit Program (AWAP)</p> <p>16 developed by the National Council of Chain</p> <p>17 Restaurants (NCCR) and the Food Marketing</p> <p>18 Institute (FMI)."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. And then the last paragraph</p> <p>22 states, "The second issue deals with the</p> <p>23 relationship between the AWAP audit and the</p> <p>24 United Egg Producers (UEP) Animal Care</p> <p>25 Certified audit." It goes down, in the last</p>	<p style="text-align: right;">300</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. MCKENNEY: Objection to</p> <p>3 form.</p> <p>4 THE WITNESS: I don't recall.</p> <p>5 BY MR. WILDERS:</p> <p>6 Q. Was one of the differences the</p> <p>7 fact that the UEP Certified Program was a</p> <p>8 pass/fail test and the AWAP audit did not</p> <p>9 attempt to determine whether a producer</p> <p>10 passed or failed any particular criteria?</p> <p>11 MR. MCKENNEY: Objection to</p> <p>12 form.</p> <p>13 MS. SUMNER: Objection to form.</p> <p>14 MR. MCKENNEY: Leading.</p> <p>15 THE WITNESS: Now I recall that</p> <p>16 AWAP was a pass/fail and ours was</p> <p>17 specifically and purposely not a</p> <p>18 pass/fail.</p> <p>19 BY MR. WILDERS:</p> <p>20 Q. Why was it not purposely a</p> <p>21 pass/fail, the FMI audit?</p> <p>22 A. From a standpoint of a trade</p> <p>23 association to say that certain suppliers</p> <p>24 pass or fail was an implication that we</p> <p>25 didn't want to make. We characterized it</p>
<p style="text-align: right;">299</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 sentence there it says, "Neither NCCR nor FMI</p> <p>3 have determined that an Animal Care Certified</p> <p>4 audit is equivalent to or should replace an</p> <p>5 AWAP audit, suggesting equivalency is</p> <p>6 misleading and incorrect."</p> <p>7 Did I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. Was there a period of time when</p> <p>10 UEP was misrepresenting the equivalency</p> <p>11 between an AWAP audit and a UEP certified</p> <p>12 audit?</p> <p>13 MS. SUMNER: Object to the form.</p> <p>14 THE WITNESS: That is stated in</p> <p>15 this letter.</p> <p>16 BY MR. WILDERS:</p> <p>17 Q. Do you have a recollection of</p> <p>18 that fact?</p> <p>19 A. I know that there were</p> <p>20 differences between the two audits, and there</p> <p>21 was discussion on how to remove the</p> <p>22 differences.</p> <p>23 Q. Was there ever any -- was UEP</p> <p>24 ever misrepresenting that there were not</p> <p>25 differences between the two audits?</p>	<p style="text-align: right;">301</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 differently as excellent, good, acceptable</p> <p>3 and needs improvement or nonconformity. I</p> <p>4 think the last term was nonconformity.</p> <p>5 Q. So you left it to your members</p> <p>6 to decide --</p> <p>7 A. Correct.</p> <p>8 Q. -- what to do with the results</p> <p>9 of an audit?</p> <p>10 A. Correct.</p> <p>11 MR. WILDERS: I thank you for</p> <p>12 your time. That's all the questions I</p> <p>13 have right now. I'm going to pass it</p> <p>14 off to the next person here. Okay?</p> <p>15 THE WITNESS: Okay. Thank you.</p> <p>16 MR. WILDERS: Off the record.</p> <p>17 VIDEOGRAPHER: Off the record at</p> <p>18 5:44.</p> <p>19 - - -</p> <p>20 (A recess was taken.)</p> <p>21 - - -</p> <p>22 VIDEOGRAPHER: We're back on the</p> <p>23 record at 5:46.</p> <p>24 - - -</p> <p>25 EXAMINATION</p>

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<p style="text-align: right;">302</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 BY MR. RANDALL:</p> <p>4 Q. Good evening, Ms. Brown. My</p> <p>5 name is Sam Randall, and I represent the</p> <p>6 Kroger plaintiffs in this case. That's</p> <p>7 Kroger, Safeway, Albertsons and some other</p> <p>8 FMI members.</p> <p>9 I just wanted to start off by</p> <p>10 reviewing some of -- I had some follow-up</p> <p>11 questions on some of the documents that you</p> <p>12 were shown previously.</p> <p>13 A. Okay.</p> <p>14 Q. So we can do these in order to</p> <p>15 make it go more easily. Can we start off</p> <p>16 with Exhibit 2? Would it be easier to go in</p> <p>17 reverse order?</p> <p>18 A. No, it's okay. Are you going</p> <p>19 to do this one, too?</p> <p>20 Q. No.</p> <p>21 Could you review the second</p> <p>22 paragraph of this article that you wrote</p> <p>23 starting with "Retailers are far removed...?"</p> <p>24 A. Would you like me to read it</p> <p>25 out loud or look at it?</p>	<p style="text-align: right;">304</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. RANDALL:</p> <p>3 Q. There have been some terms</p> <p>4 thrown out today that you don't have</p> <p>5 knowledge about, backfilling, for instance.</p> <p>6 Would that also be true of FMI members?</p> <p>7 MS. SUMNER: Object to the form.</p> <p>8 MR. MCKENNEY: Objection.</p> <p>9 Leading.</p> <p>10 MS. SUMNER: Lacks foundation.</p> <p>11 THE WITNESS: I'm not sure I</p> <p>12 understand the question.</p> <p>13 BY MR. RANDALL:</p> <p>14 Q. Do you believe that the term,</p> <p>15 for instance, "backfilling" is widely known</p> <p>16 as to its meaning within FMI's membership?</p> <p>17 MS. SUMNER: Object to the form.</p> <p>18 THE WITNESS: I have no idea of</p> <p>19 knowing, but I don't recall any</p> <p>20 conversation I had with an FMI member</p> <p>21 using that term.</p> <p>22 BY MR. RANDALL:</p> <p>23 Q. That's all I have about that</p> <p>24 document.</p> <p>25 The next one is Exhibit 5.</p>
<p style="text-align: right;">303</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Just read it to yourself.</p> <p>3 A. [Reviewing document.]</p> <p>4 Thank you. I read it.</p> <p>5 Q. Would you continue to agree</p> <p>6 today that retailers are far removed from</p> <p>7 live animal processes?</p> <p>8 A. Yes.</p> <p>9 Q. Would you continue to agree</p> <p>10 that retailers have limited ways of knowing</p> <p>11 or monitoring the conditions under which</p> <p>12 animals are raised or produced?</p> <p>13 A. At the time that I was involved</p> <p>14 in the industry, yes.</p> <p>15 Q. From your time in the industry,</p> <p>16 would it be fair to -- would it be a fair</p> <p>17 characterization of the retailers to say that</p> <p>18 they don't have much knowledge about the</p> <p>19 specific nitty-gritty of egg farming?</p> <p>20 MS. SUMNER: Objection.</p> <p>21 Leading.</p> <p>22 THE WITNESS: Yes, because</p> <p>23 they're merchants, but not farmers or</p> <p>24 producers. And they're not product</p> <p>25 process specific.</p>	<p style="text-align: right;">305</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. I have it.</p> <p>3 Q. Were members of the egg</p> <p>4 industry including UEP placing pressure on</p> <p>5 FMI members to support the UEP standards?</p> <p>6 MR. MCKENNEY: Objection to</p> <p>7 form.</p> <p>8 THE WITNESS: They definitely</p> <p>9 were communicating their enthusiastic</p> <p>10 interest in having FMI members</p> <p>11 participate or require participation</p> <p>12 in the program.</p> <p>13 BY MR. RANDALL:</p> <p>14 Q. Why do you think that was?</p> <p>15 MS. SUMNER: Objection.</p> <p>16 THE WITNESS: I think it was</p> <p>17 important to them and they felt it was</p> <p>18 important to the success of their</p> <p>19 program.</p> <p>20 BY MR. RANDALL:</p> <p>21 Q. Did it go the other way around,</p> <p>22 can you think of specific FMI members placing</p> <p>23 pressure on the UEP to implement specific</p> <p>24 guidelines?</p> <p>25 A. No. Those would have been</p>

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<p style="text-align: right;">306</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 conversations that they would have had</p> <p>3 individually with their own suppliers if they</p> <p>4 decided to do that.</p> <p>5 Q. In general terms, what was --</p> <p>6 A. To my knowledge anyway. As far</p> <p>7 as I know.</p> <p>8 Q. In general terms, what was the</p> <p>9 goal of FMI's membership in initiating this</p> <p>10 process with respect to animal welfare?</p> <p>11 A. The primary goal, because they</p> <p>12 knew that consumers were looking to them --</p> <p>13 the retailer is very visible and very</p> <p>14 accessible to the general public. There is</p> <p>15 no way that really they can run and hide.</p> <p>16 People are in their stores every day and they</p> <p>17 hear from their customers on a daily basis</p> <p>18 about what it is they like and what they</p> <p>19 don't like. When issues become priority</p> <p>20 issues because of media and other public</p> <p>21 attention to it, the retailer hears about it,</p> <p>22 and within that context, the retailer's goal</p> <p>23 with animal welfare was to assure that</p> <p>24 animals in the agriculture system used as</p> <p>25 food would be raised, transported and</p>	<p style="text-align: right;">308</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 their prerogative and they could attend the</p> <p>3 meeting. But I mean, a meeting without --</p> <p>4 with stakeholders.</p> <p>5 Q. And did you ever give the</p> <p>6 indication that Kroger agreed with positions</p> <p>7 that you were taking or would take?</p> <p>8 A. Kroger was a long-time member</p> <p>9 of FMI and was on our board and their</p> <p>10 executives participated in our member</p> <p>11 committee, so within that context, yes.</p> <p>12 Q. Did Kroger -- did you get the</p> <p>13 impression that Kroger's acceptance of the</p> <p>14 UEP program was up to Kroger?</p> <p>15 A. Absolutely.</p> <p>16 Q. Was it -- was that the case for</p> <p>17 all FMI members?</p> <p>18 A. Absolutely.</p> <p>19 Q. Would that have been clear to</p> <p>20 anybody attending these meetings with FMI and</p> <p>21 UEP?</p> <p>22 A. Yes.</p> <p>23 MR. BARNES: Object to the form.</p> <p>24 BY MR. RANDALL:</p> <p>25 Q. That's all for that document.</p>
<p style="text-align: right;">307</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 processed in a safe manner that was free from</p> <p>3 abuse and neglect.</p> <p>4 Q. And in these meetings that you</p> <p>5 had with UEP and UEP membership, did you ever</p> <p>6 represent that you were communicating</p> <p>7 specific messages from specific UEP</p> <p>8 members -- I'm sorry, from specific FMI</p> <p>9 members?</p> <p>10 A. No. We talked about it from</p> <p>11 the standpoint of the royal we. We as the</p> <p>12 retailer of the association representing the</p> <p>13 retail industry, here is our policy and</p> <p>14 program developed and approved by our Board.</p> <p>15 This was the basis of our conversations with</p> <p>16 everybody on the issue.</p> <p>17 Q. And let's use Kroger as an</p> <p>18 example. Did you ever say anything in these</p> <p>19 meetings that would have given the impression</p> <p>20 that you were speaking for Kroger?</p> <p>21 A. We always spoke on behalf of</p> <p>22 the industry in general and our members as a</p> <p>23 group. If an individual member for some</p> <p>24 reason wanted to come to a meeting, I don't</p> <p>25 recall Kroger ever doing that, then that was</p>	<p style="text-align: right;">309</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 We're going to skip ahead to</p> <p>3 Exhibit 16. Just by way of background, I'll</p> <p>4 represent to you that this was produced by</p> <p>5 Midwest Poultry in this case.</p> <p>6 A. Okay.</p> <p>7 Q. Do you have any idea who wrote</p> <p>8 this document?</p> <p>9 A. No.</p> <p>10 Q. Was it anybody from FMI?</p> <p>11 A. No.</p> <p>12 Q. I'd like you to refer to point</p> <p>13 8 on this document where it says, "Tim</p> <p>14 Hammond - FMI will work with UEP to push the</p> <p>15 FMI members to accept and implement</p> <p>16 guidelines."</p> <p>17 Is that how Tim Hammonds</p> <p>18 characterized this meeting with members of</p> <p>19 UEP?</p> <p>20 A. Not in my presence. Not to my</p> <p>21 knowledge.</p> <p>22 Q. Is that how you would have</p> <p>23 characterized --</p> <p>24 A. No.</p> <p>25 Q. -- this -- sorry. Is that how</p>

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<p style="text-align: right;">310</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 you would have characterized this meeting?</p> <p>3 MR. MCKENNEY: Objection to</p> <p>4 form.</p> <p>5 THE WITNESS: No. The term</p> <p>6 "push" implies we were going to tell</p> <p>7 our members what to do, and that was</p> <p>8 not a part of FMI's mission.</p> <p>9 BY MR. RANDALL:</p> <p>10 Q. Do you recall Tim Hammonds ever</p> <p>11 saying that he was going to push FMI members</p> <p>12 to do anything?</p> <p>13 A. No.</p> <p>14 Q. Other than pay their dues</p> <p>15 maybe?</p> <p>16 A. Right. No.</p> <p>17 Q. Do you recall specifically Tim</p> <p>18 Hammonds pushing FMI members to accept and</p> <p>19 implement the UEP guidelines?</p> <p>20 A. No.</p> <p>21 Q. Did you get the impression from</p> <p>22 these meetings that UEP felt the need to push</p> <p>23 for acceptance of these guidelines?</p> <p>24 MS. SUMNER: Object to the form</p> <p>25 of the question.</p>	<p style="text-align: right;">312</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you know whether the UEP's</p> <p>3 Scientific Committee's recommendations</p> <p>4 necessarily became part of the UEP</p> <p>5 guidelines?</p> <p>6 MR. MCKENNEY: Objection to</p> <p>7 form.</p> <p>8 THE WITNESS: I wasn't a party</p> <p>9 to their discussions so I don't know</p> <p>10 what would have been accepted and what</p> <p>11 would have been not accepted on the</p> <p>12 part of what the advisory committee</p> <p>13 was recommending.</p> <p>14 BY MR. RANDALL:</p> <p>15 Q. Did you know that the UEP</p> <p>16 Scientific Committee did not provide for a</p> <p>17 phase-in period for the cage space</p> <p>18 guidelines?</p> <p>19 MS. SUMNER: Objection. Lacks</p> <p>20 foundation.</p> <p>21 THE WITNESS: I did not know</p> <p>22 that.</p> <p>23 MR. MCKENNEY: Objection to</p> <p>24 form. Mischaracterizes the record.</p> <p>25 BY MR. RANDALL:</p>
<p style="text-align: right;">311</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: As I stated</p> <p>3 before, UEP was very enthusiastic</p> <p>4 about communicating their desire that</p> <p>5 everybody involved in egg laying on</p> <p>6 all sides support their program.</p> <p>7 BY MR. RANDALL:</p> <p>8 Q. Now let's go to Exhibit 17. In</p> <p>9 particular, I want to start at page 902 of</p> <p>10 this document.</p> <p>11 A. Okay.</p> <p>12 Q. Do you know what UEP's</p> <p>13 Scientific Committee was?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall generally what</p> <p>16 their recommendations were with respect to</p> <p>17 animal welfare?</p> <p>18 MS. SUMNER: Objection.</p> <p>19 THE WITNESS: I know what their</p> <p>20 recommendations were as they are</p> <p>21 contained in these printed documents</p> <p>22 such as Brown-31, FMI-000386 which is</p> <p>23 the 2006 edition of the UEP guidelines</p> <p>24 for U.S. egg laying flocks.</p> <p>25 BY MR. RANDALL:</p>	<p style="text-align: right;">313</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Now, based on my representation</p> <p>3 to you that the UEP Scientific Committee did</p> <p>4 not provide for a phase-in period, does that</p> <p>5 provide any context for this paragraph, the</p> <p>6 second full paragraph on page 902?</p> <p>7 MR. BARNES: Object to the form.</p> <p>8 THE WITNESS: Is this the</p> <p>9 paragraph that starts with "The</p> <p>10 current program..."?</p> <p>11 BY MR. RANDALL:</p> <p>12 Q. Yes, that paragraph.</p> <p>13 A. Okay. Would you repeat the</p> <p>14 question again? I'm sorry. It's getting</p> <p>15 late for me, too.</p> <p>16 Q. I'll read the paragraph. It</p> <p>17 says, "The current program as proposed meets</p> <p>18 current Industry Equipment needs and does not</p> <p>19 create Guidelines that are either 'impossible</p> <p>20 or unattainable'. Based upon existing</p> <p>21 equipment and existing density, meeting the</p> <p>22 Scientific Committee's target could reduce</p> <p>23 house capacity and the U.S. Egg Supply by a</p> <p>24 minimum of 12 to as much as 44%."</p> <p>25 Did I read that paragraph</p>

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<p style="text-align: right;">314</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 accurately?</p> <p>3 A. Yes. So I don't know about</p> <p>4 this. I mean, this is from the UEP</p> <p>5 Scientific Committee recommending something.</p> <p>6 And UEP, as I read this, is saying that's</p> <p>7 difficult.</p> <p>8 Q. As a matter of flock</p> <p>9 disruption, does it make sense that there</p> <p>10 would be a substantially greater flock</p> <p>11 disruption if the egg industry were to go</p> <p>12 from its then existing cage space guidelines</p> <p>13 to 67 square inches immediately?</p> <p>14 A. I don't know the answer to that</p> <p>15 question. I just don't -- I don't have the</p> <p>16 background or the knowledge to answer that</p> <p>17 question.</p> <p>18 Q. In context, do you know whether</p> <p>19 the document is referring to the flock</p> <p>20 disruption by the actual UEP guidelines or by</p> <p>21 the recommendations from the Scientific</p> <p>22 Committee?</p> <p>23 MS. SUMNER: Objection to form.</p> <p>24 THE WITNESS: I'm sorry, can you</p> <p>25 repeat that one more time? I'm sorry.</p>	<p style="text-align: right;">316</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. I see that paragraph.</p> <p>3 Q. And then below that it says,</p> <p>4 "New construction will be required to avoid</p> <p>5 this market disruption."</p> <p>6 A. I see that sentence.</p> <p>7 Q. Would it have changed your</p> <p>8 perceptions about the UEP program if you knew</p> <p>9 that UEP would encourage members not to build</p> <p>10 new houses to replace the displaced hens?</p> <p>11 MS. SUMNER: Objection to form.</p> <p>12 Lacks foundation.</p> <p>13 THE WITNESS: Again, our focus</p> <p>14 was on the humane handling of animals.</p> <p>15 Space allocation was a significant</p> <p>16 issue when it came to egg laying hens.</p> <p>17 The system needed to be improved and</p> <p>18 it was the feeling of our scientific</p> <p>19 committee, some of whom sat on the UEP</p> <p>20 Scientific Committee, although we</p> <p>21 didn't have discussions back and forth</p> <p>22 about the committee meetings, that</p> <p>23 they needed to shorten their time</p> <p>24 frame. That's basically it.</p> <p>25 BY MR. RANDALL:</p>
<p style="text-align: right;">315</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. RANDALL:</p> <p>3 Q. Do you know whether the</p> <p>4 document is referring to the disruption in</p> <p>5 the nation's flock based on the UEP</p> <p>6 guidelines as they were proposed or based on</p> <p>7 the Scientific Committee's recommendations to</p> <p>8 UEP?</p> <p>9 MS. SUMNER: Object to the form</p> <p>10 of the question.</p> <p>11 THE WITNESS: I don't have any</p> <p>12 specific knowledge about this</p> <p>13 discussion or this issue as is laid</p> <p>14 out here. I only know what I read.</p> <p>15 So this, as I read it, is a</p> <p>16 recommendation from their Scientific</p> <p>17 Committee, and UEP is stating they</p> <p>18 have problems with it.</p> <p>19 BY MR. RANDALL:</p> <p>20 Q. Going to the next page of the</p> <p>21 document, do you see where it says, "Based</p> <p>22 upon existing equipment and existing density,</p> <p>23 meeting the Scientific Committee's target</p> <p>24 could reduce house capacity and the U.S. Egg</p> <p>25 Supply by a minimum of 12 to as much as 44%"?</p>	<p style="text-align: right;">317</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Keep that document there for a</p> <p>3 second and also bring out Exhibit 22.</p> <p>4 A. I have it.</p> <p>5 Q. Do you see in the middle of the</p> <p>6 second paragraph it says, "We intend to</p> <p>7 deliver on our commitment to provide you with</p> <p>8 a program that will prove meaningful and</p> <p>9 orderly with little or no market</p> <p>10 disruptions."</p> <p>11 A. I see that paragraph.</p> <p>12 Q. And then compare that to the</p> <p>13 Exhibit 17 where it says, "New construction</p> <p>14 will be required to avoid this market</p> <p>15 disruption."</p> <p>16 A. Okay.</p> <p>17 Q. Do you believe that UEP was</p> <p>18 making a commitment to minimize any market</p> <p>19 effects that the implementation of the UEP</p> <p>20 program would have?</p> <p>21 A. I really don't know the answer</p> <p>22 to that question. I would have to take it at</p> <p>23 face value. As I said before, we always had</p> <p>24 a healthy skepticism when suppliers would</p> <p>25 list reasons why something couldn't be</p>

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<p style="text-align: right;">318</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 achieved. But I'm not an economist, I'm not</p> <p>3 an animal -- I'm not an agriculture expert.</p> <p>4 I'm not an expert on egg laying. I really</p> <p>5 can't answer that question.</p> <p>6 Q. Was it important to FMI's</p> <p>7 membership that there not be market</p> <p>8 disruptions?</p> <p>9 A. Of course FMI's membership</p> <p>10 wanted to be sure that they had all the</p> <p>11 products available in their stores that</p> <p>12 consumers wanted to buy.</p> <p>13 Q. So would that promise to</p> <p>14 provide FMI with a program that will prove</p> <p>15 meaningful and orderly with little or no</p> <p>16 market disruptions, would that have been</p> <p>17 important to FMI's members?</p> <p>18 MR. MCKENNEY: Objection to</p> <p>19 form.</p> <p>20 THE WITNESS: The way this is</p> <p>21 stated is pretty general, and it</p> <p>22 doesn't have a lot of specifics in it.</p> <p>23 It's certainly the one -- you know,</p> <p>24 it's the kind of statement that</p> <p>25 anybody would think would be a good</p>	<p style="text-align: right;">320</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Gene Gregory was very prolific.</p> <p>3 Okay.</p> <p>4 Q. Now, when you responded to Mr.</p> <p>5 Gregory's e-mail on or about May 3, 2005, you</p> <p>6 were referring to a second set of Animal</p> <p>7 Welfare Guidelines. Right?</p> <p>8 A. Yes.</p> <p>9 Q. Had you seen --</p> <p>10 A. Well, a separate set. Right.</p> <p>11 Q. Had you seen any alternate,</p> <p>12 alternative animal welfare guidelines when</p> <p>13 you responded to that?</p> <p>14 A. That were weaker than UEP, no.</p> <p>15 Q. Approximately how long after</p> <p>16 Mr. Gregory sent that e-mail did you respond?</p> <p>17 A. It says a day later.</p> <p>18 Q. That's all for that document.</p> <p>19 A. By the way, the good news was</p> <p>20 on the molting issue, not his whole</p> <p>21 communication.</p> <p>22 Q. One more question about market</p> <p>23 disruption. With the five-year phase-in for</p> <p>24 cage space guidelines, did you believe that</p> <p>25 the egg producers could avoid any disruption</p>
<p style="text-align: right;">319</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 statement.</p> <p>3 BY MR. RANDALL:</p> <p>4 Q. Is discouraging members from</p> <p>5 building new henhouses consistent with that</p> <p>6 promise?</p> <p>7 MS. SUMNER: Object to the form.</p> <p>8 THE WITNESS: I don't know the</p> <p>9 answer to that question from the</p> <p>10 context of what was going on</p> <p>11 internally within UEP. I really don't</p> <p>12 know the answer to that question.</p> <p>13 There is no -- there is certainly --</p> <p>14 there were a number of things that</p> <p>15 related to space allocation across a</p> <p>16 number of species that would require</p> <p>17 new construction. The question was,</p> <p>18 when that time would normally occur,</p> <p>19 were you going to keep the animals in</p> <p>20 a less humane situation than they</p> <p>21 might be if you did something</p> <p>22 differently.</p> <p>23 BY MR. RANDALL:</p> <p>24 Q. That's all for that document.</p> <p>25 Skip ahead to Exhibit 28.</p>	<p style="text-align: right;">321</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 to the market?</p> <p>3 A. Again, we didn't get into those</p> <p>4 kinds of specific conversations. We just --</p> <p>5 we didn't. They either said they could do it</p> <p>6 or they said they couldn't do it.</p> <p>7 Q. You've spoken generally with</p> <p>8 Mr. Patton what was it, a few years ago?</p> <p>9 A. Uh-huh. At least a year ago.</p> <p>10 Maybe more.</p> <p>11 Q. Do you understand generally the</p> <p>12 allegations that are being made by the</p> <p>13 plaintiffs in this case?</p> <p>14 A. I understand a lot more today</p> <p>15 than I did before I spoke to Mr. Patton.</p> <p>16 Q. Do you also understand that</p> <p>17 certain defendants are also claiming that</p> <p>18 some of FMI's members have committed fraud by</p> <p>19 supporting the Animal Welfare Guidelines</p> <p>20 between 2000 and today?</p> <p>21 MR. BARNES: Object to the form.</p> <p>22 THE WITNESS: I don't know about</p> <p>23 that.</p> <p>24 MR. BARNES: Object to the form.</p> <p>25 BY MR. RANDALL:</p>

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<p style="text-align: right;">322</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you believe there is</p> <p>3 anything inconsistent between the -- FMI's</p> <p>4 position as to animal welfare and FMI's</p> <p>5 members' positions as to animal welfare and</p> <p>6 their representations of price fixing that</p> <p>7 you're familiar with that you've heard today?</p> <p>8 MR. MCKENNEY: Object to the</p> <p>9 form. Objection to the form. Calls</p> <p>10 for speculation.</p> <p>11 THE WITNESS: Okay. Let's take</p> <p>12 the members and FMI's position on</p> <p>13 animal welfare. FMI's members and our</p> <p>14 position have a common goal. How that</p> <p>15 is implemented between retailer and</p> <p>16 supplier falls into this area of terms</p> <p>17 of trade which FMI has no knowledge or</p> <p>18 appropriate interest in. So that</p> <p>19 is -- you know, our goals are common.</p> <p>20 How the goals get implemented</p> <p>21 individually by individual companies</p> <p>22 for a voluntary program is exactly</p> <p>23 that, individual companies will make</p> <p>24 individual decisions on how they're</p> <p>25 going to use a voluntary program and</p>	<p style="text-align: right;">324</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 would be highly unusual for me to do that.</p> <p>3 Q. If you had done so, would you</p> <p>4 have done that in writing?</p> <p>5 A. I hope not.</p> <p>6 MR. GREEN: You might want to</p> <p>7 clarify that.</p> <p>8 THE WITNESS: I meant that as a</p> <p>9 joke. Only within the context of all</p> <p>10 the pieces of paper I see here where I</p> <p>11 wouldn't have written those things.</p> <p>12 No, I would not have done that. I</p> <p>13 would not have made that statement to</p> <p>14 our members directly and I would not</p> <p>15 have put it in writing.</p> <p>16 BY MR. RANDALL:</p> <p>17 Q. Did you intend to encourage the</p> <p>18 egg producers to reduce the domestic flock of</p> <p>19 egg laying hens?</p> <p>20 A. No.</p> <p>21 Q. Do you believe anything that</p> <p>22 you said or that FMI said to UEP could be</p> <p>23 construed as encouraging that?</p> <p>24 MR. BARNES: Objection to form.</p> <p>25 Speculation.</p>
<p style="text-align: right;">323</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 which components of that program</p> <p>3 they're going to buy into. But the</p> <p>4 common goal of improving and enhancing</p> <p>5 animal welfare was definitely across</p> <p>6 the board with FMI members.</p> <p>7 BY MR. RANDALL:</p> <p>8 Q. Did you ever inform UEP that</p> <p>9 you were supporting efforts to reduce the</p> <p>10 domestic flock size for egg laying hens?</p> <p>11 A. We would never have made that</p> <p>12 kind of a statement. I'd be fired.</p> <p>13 Q. Are you aware of whether any</p> <p>14 FMI members ever made any statements to that</p> <p>15 effect?</p> <p>16 MS. SUMNER: Objection.</p> <p>17 THE WITNESS: I'm not aware of</p> <p>18 any such statements.</p> <p>19 BY MR. RANDALL:</p> <p>20 Q. Did you ever inform FMI's</p> <p>21 membership that the UEP guidelines would lead</p> <p>22 to a reduction in the domestic flock of egg</p> <p>23 laying hens?</p> <p>24 A. I don't recall ever doing that</p> <p>25 myself. I don't recall. I mean, I -- it</p>	<p style="text-align: right;">325</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. MCKENNEY: Objection.</p> <p>3 THE WITNESS: No. All we were</p> <p>4 talking to UEP about was their</p> <p>5 guidelines as analyzed by our expert</p> <p>6 advisory committee and what the expert</p> <p>7 advisory committee's recommendations</p> <p>8 were to the UEP in the areas where</p> <p>9 they needed to improve them and the</p> <p>10 areas where they had done a good job.</p> <p>11 BY MR. RANDALL:</p> <p>12 Q. Speaking generally, can an</p> <p>13 animal welfare program actually increase</p> <p>14 productivity of animals?</p> <p>15 A. I'm not -- I don't have the</p> <p>16 standing to make a statement on that.</p> <p>17 Q. Now, you've heard a little bit</p> <p>18 about what's been called the 100 percent rule</p> <p>19 today. Do you have an understanding now and</p> <p>20 a memory of what that rule is?</p> <p>21 A. I do.</p> <p>22 MR. BARNES: Objection.</p> <p>23 Repetitive. This witness has been</p> <p>24 asked that question repeatedly. She</p> <p>25 previously testified she gets</p>

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<p style="text-align: right;">326</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 irritated when asked repetitive</p> <p>3 questions. So do it at your own risk.</p> <p>4 I object.</p> <p>5 MR. RANDALL: Thank you. I</p> <p>6 appreciate the warning.</p> <p>7 BY MR. RANDALL:</p> <p>8 Q. With that in mind, did you</p> <p>9 ever -- did you or FMI ever endorse the</p> <p>10 100 percent rule?</p> <p>11 A. Not to my knowledge. We</p> <p>12 endorsed their -- our experts endorsed their</p> <p>13 guidelines. We did not get into endorsing</p> <p>14 the execution of their program.</p> <p>15 Q. Was the 100 percent rule ever</p> <p>16 part of the UEP guidelines as distinct from</p> <p>17 the UEP program?</p> <p>18 MS. SUMNER: Objection.</p> <p>19 MR. BARNES: Objection to form.</p> <p>20 THE WITNESS: I have to admit</p> <p>21 that I haven't read every single word</p> <p>22 in every single document of UEP's, of</p> <p>23 their guidelines. I don't remember</p> <p>24 seeing it in there.</p> <p>25 BY MR. RANDALL:</p>	<p style="text-align: right;">328</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 you don't sitting here today know what</p> <p>3 backfilling means --</p> <p>4 A. I don't understand the term.</p> <p>5 Q. Okay.</p> <p>6 A. You know, it's like the news</p> <p>7 media doesn't understand the term slotting</p> <p>8 allowances or whatever, you know. I mean,</p> <p>9 there are call kinds of terms within the</p> <p>10 industry that mean something to the industry</p> <p>11 participants but may not mean anything to</p> <p>12 somebody outside of the industry. Even</p> <p>13 though I know a lot about the food industry</p> <p>14 in general, backfilling is not a term I'm</p> <p>15 familiar with. I can only speculate, and I</p> <p>16 will not.</p> <p>17 Q. But as you understand what the</p> <p>18 FMI did or did not endorse, backfilling is</p> <p>19 not a part of it?</p> <p>20 A. Not specifically.</p> <p>21 MR. BARNES: Objection to form.</p> <p>22 THE WITNESS: I don't see it on</p> <p>23 any of those pieces of paper except</p> <p>24 for in this UEP document. That's the</p> <p>25 only place I see it.</p>
<p style="text-align: right;">327</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Are you aware of any of FMI's</p> <p>3 members ever endorsing the 100 percent rule?</p> <p>4 A. Not that I'm aware of.</p> <p>5 Q. Did FMI ever endorse the band</p> <p>6 on what's known as backfilling?</p> <p>7 MR. BARNES: Objection. The</p> <p>8 witness testified she doesn't know</p> <p>9 what backfilling is.</p> <p>10 THE WITNESS: I'm not sure what</p> <p>11 backfilling is. I could speculate and</p> <p>12 I'm not. But I can only speculate</p> <p>13 after reading it here today. I don't</p> <p>14 know if -- I don't know the term. We</p> <p>15 didn't endorse specific parts -- our</p> <p>16 experts didn't endorse specific parts</p> <p>17 of the guidelines. They basically</p> <p>18 pointed out those areas in the</p> <p>19 guidelines that needed improvement.</p> <p>20 BY MR. RANDALL:</p> <p>21 Q. If FMI had endorsed something,</p> <p>22 do you believe you would have understood what</p> <p>23 it meant to make that endorsement?</p> <p>24 A. Yes.</p> <p>25 Q. So do you think the fact that</p>	<p style="text-align: right;">329</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. RANDALL:</p> <p>3 Q. Was FMI's overarching purpose</p> <p>4 in promoting best practices to assure the</p> <p>5 humane treatment of farm animals?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what a flock</p> <p>8 reduction is?</p> <p>9 A. Fewer chickens in the flock.</p> <p>10 Q. What does it mean to you, a 5</p> <p>11 percent flock reduction?</p> <p>12 A. If you got 100 chickens, you</p> <p>13 end up with 95.</p> <p>14 Q. Now, were you aware that UEP</p> <p>15 and UEP members coordinated at various times</p> <p>16 joint efforts to reduce their flock sizes by</p> <p>17 5 percent?</p> <p>18 A. Absolutely not.</p> <p>19 MS. SUMNER: Object to the form.</p> <p>20 BY MR. RANDALL:</p> <p>21 Q. Did you ever endorse that</p> <p>22 practice?</p> <p>23 A. No.</p> <p>24 MS. SUMNER: Objection.</p> <p>25 BY MR. RANDALL:</p>

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<p style="text-align: right;">330</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Based on your understanding of</p> <p>3 a flock reduction, how do you believe that</p> <p>4 would be implemented?</p> <p>5 MS. SUMNER: Objection.</p> <p>6 THE WITNESS: I haven't a clue.</p> <p>7 BY MR. RANDALL:</p> <p>8 Q. How would you go from 100 hens</p> <p>9 to 95?</p> <p>10 MS. SUMNER: Objection.</p> <p>11 THE WITNESS: You can have some</p> <p>12 die because they're all stuffed</p> <p>13 together in the same cage.</p> <p>14 BY MR. RANDALL:</p> <p>15 Q. Would that be consistent with</p> <p>16 animal welfare in your opinion?</p> <p>17 MR. MCKENNEY: Objection to</p> <p>18 form.</p> <p>19 THE WITNESS: That is one of the</p> <p>20 concerns when it comes to space</p> <p>21 allocation for egg laying hens.</p> <p>22 BY MR. RANDALL:</p> <p>23 Q. Were you ever told that the UEP</p> <p>24 was encouraging its members to pass on the</p> <p>25 costs of implementing the UEP program to egg</p>	<p style="text-align: right;">332</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 flocks?</p> <p>3 MS. SUMNER: Object to the form</p> <p>4 of the question.</p> <p>5 THE WITNESS: Forced molting as</p> <p>6 we learned from our experts was a</p> <p>7 common practice across the industry,</p> <p>8 and it was one of the practices that</p> <p>9 they highlighted as inhumane to</p> <p>10 animals.</p> <p>11 BY MR. RANDALL:</p> <p>12 Q. So would FMI's endorsement have</p> <p>13 extended to an early molt or a forced molt of</p> <p>14 a flock?</p> <p>15 A. We identify that as one of our</p> <p>16 significant exceptions to their guidelines</p> <p>17 early on.</p> <p>18 MR. RANDALL: We can go off the</p> <p>19 record.</p> <p>20 VIDEOGRAPHER: Off the record at</p> <p>21 6:22.</p> <p>22 - - -</p> <p>23 (A recess was taken.)</p> <p>24 - - -</p> <p>25 VIDEOGRAPHER: Back on the</p>
<p style="text-align: right;">331</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 purchasers?</p> <p>3 MS. SUMNER: Object to the form</p> <p>4 of the question.</p> <p>5 THE WITNESS: No, I never had</p> <p>6 any conversations like that.</p> <p>7 BY MR. RANDALL:</p> <p>8 Q. Would you have supported those</p> <p>9 efforts if you knew about them?</p> <p>10 A. No.</p> <p>11 Q. Do you know what forced molting</p> <p>12 is?</p> <p>13 A. Yes.</p> <p>14 Q. What is forced molting?</p> <p>15 A. You starve the chicken so that</p> <p>16 it will lay eggs faster.</p> <p>17 Q. Do you believe that forced</p> <p>18 molting is consistent with animal welfare?</p> <p>19 A. No.</p> <p>20 Q. What was the UEP -- sorry, what</p> <p>21 was the FMI's position on forced molting?</p> <p>22 A. Our expert said it should be</p> <p>23 eliminated.</p> <p>24 Q. Were you aware that the UEP at</p> <p>25 various times was encouraging molts of</p>	<p style="text-align: right;">333</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 record at 6:23.</p> <p>3 - - -</p> <p>4 FURTHER EXAMINATION</p> <p>5 - - -</p> <p>6 BY MS. SUMNER:</p> <p>7 Q. Ms. Brown, you were shown a</p> <p>8 couple of e-mails from -- that you received</p> <p>9 from Gene Gregory at various points in time</p> <p>10 by Mr. Wilders. Do you recall those?</p> <p>11 A. Yes.</p> <p>12 Q. Did Mr. Gregory's e-mail change</p> <p>13 FMI's conduct in any way?</p> <p>14 MR. WILDERS: The e-mail that</p> <p>15 she was shown?</p> <p>16 THE WITNESS: Can you be more</p> <p>17 specific? All of his e-mails</p> <p>18 together, one of his e-mails in</p> <p>19 particular or, you know, a particular</p> <p>20 statement? His e-mails covered a lot</p> <p>21 of different topics and subjects.</p> <p>22 BY MS. SUMNER:</p> <p>23 Q. Let me just show you the ones</p> <p>24 we're referring to specifically. Mr. Wilders</p> <p>25 marked for you e-mails at Exhibits 34,</p>

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<p style="text-align: right;">334</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Brown-34, Brown-35, and Brown-36, and</p> <p>3 Brown-37.</p> <p>4 A. Okay.</p> <p>5 Q. My question is simply, did FMI</p> <p>6 do what Gene was asking them to do in</p> <p>7 response to any of these e-mails?</p> <p>8 A. No. Well, I mean, I would have</p> <p>9 to go through each individual e-mail. When</p> <p>10 he was asking us to share with our members</p> <p>11 specific information about, you know, what</p> <p>12 was going on within their own membership that</p> <p>13 they didn't like, no. To share information</p> <p>14 about pricing or flock reduction, or that</p> <p>15 kind of stuff, no. In Tim's e-mail, his</p> <p>16 response on the 100 percent rule was, you</p> <p>17 know, we support your guideline program and</p> <p>18 we're not going to insert ourself any further</p> <p>19 in your own association governance.</p> <p>20 Q. You were asked a couple of</p> <p>21 questions about phase-in issues and market</p> <p>22 disruption issues, how consideration was</p> <p>23 given to whether or on what schedule animal</p> <p>24 welfare guidelines could be implemented and</p> <p>25 the effect that implementing those guidelines</p>	<p style="text-align: right;">336</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 context of market disruption. You asked if</p> <p>3 it would affect cost, and the question is --</p> <p>4 Q. Let me just reask the question.</p> <p>5 A. -- how does that fit into their</p> <p>6 business plan.</p> <p>7 Q. You referenced specifically</p> <p>8 building new facilities. Correct?</p> <p>9 A. Correct.</p> <p>10 Q. And that was an issue that was</p> <p>11 faced by all of the species considering</p> <p>12 animal welfare?</p> <p>13 A. Not necessarily. If you were a</p> <p>14 cattle rancher, it wouldn't necessarily apply</p> <p>15 to you. If you were a pig farmer, yes, that</p> <p>16 could be an issue for you. As far as</p> <p>17 pregnant sows, it depends upon what kind of</p> <p>18 housing you had. Broiler chickens are not in</p> <p>19 cages. They're running free inside of huge</p> <p>20 houses, they're out in the field. So, you</p> <p>21 know, each species is completely different.</p> <p>22 Q. Fair to say it was an issue</p> <p>23 that was faced by species other than egg</p> <p>24 laying hens?</p> <p>25 A. There is -- was an issue with</p>
<p style="text-align: right;">335</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 might have on the market. Do you recall that</p> <p>3 questioning?</p> <p>4 A. Yes.</p> <p>5 Q. My question is, are those</p> <p>6 issues that were faced by all species</p> <p>7 considering animal welfare initiatives?</p> <p>8 MR. PATTON: Objection. Vague.</p> <p>9 THE WITNESS: You know, I don't</p> <p>10 know how to answer that question.</p> <p>11 Each species is different. Each issue</p> <p>12 that they had to deal with was</p> <p>13 different. We did not have market</p> <p>14 disruption pricing discussions, flock</p> <p>15 or herd reduction conversations with</p> <p>16 other organizations. Those were not</p> <p>17 the kinds of things that other</p> <p>18 organizations brought up frankly.</p> <p>19 BY MS. SUMNER:</p> <p>20 Q. I think you had mentioned</p> <p>21 specifically or referenced specifically</p> <p>22 building new facilities and that that might</p> <p>23 be required to address space for various</p> <p>24 species. Correct?</p> <p>25 A. Yes, but I didn't put it in the</p>	<p style="text-align: right;">337</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 pregnant sows, yes.</p> <p>3 Q. And are you aware that FMI's</p> <p>4 members conduct their own animal welfare</p> <p>5 audits?</p> <p>6 A. I'm not aware specifically, but</p> <p>7 I'm not surprised.</p> <p>8 Q. Was the structure of the FMI</p> <p>9 animal welfare program audit component that a</p> <p>10 retailer had to request an audit of a</p> <p>11 supplier?</p> <p>12 A. Our hope was that the producers</p> <p>13 would go through the audits, the information</p> <p>14 would be made -- they would have an</p> <p>15 opportunity to correct any non-conformances,</p> <p>16 the information would be made available on a</p> <p>17 confidential Web site that you had to have a</p> <p>18 password to get into and that through that</p> <p>19 method FMI members could go on that Web site</p> <p>20 and determine what the result of the audit</p> <p>21 was. And the reason for that particular way</p> <p>22 of laying it out was to reduce multiple</p> <p>23 audits multiple times by multiple companies</p> <p>24 on the same producer.</p> <p>25 Q. Let me ask the question maybe</p>

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<p style="text-align: right;">338</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 more clearly. Under the FMI program, an</p> <p>3 audit was done when a retailer requested that</p> <p>4 the audit be done. Correct?</p> <p>5 MR. PATTON: Object to the form.</p> <p>6 THE WITNESS: Pardon me?</p> <p>7 MR. PATTON: I objected to the</p> <p>8 form. It's leading.</p> <p>9 THE WITNESS: Ask the question</p> <p>10 again.</p> <p>11 BY MS. SUMNER:</p> <p>12 Q. Under the FMI audit program, am</p> <p>13 I correct that an audit was done at the</p> <p>14 request of a retailer?</p> <p>15 A. It could have been. But that</p> <p>16 was not required.</p> <p>17 Q. Do you know whether any</p> <p>18 retailers requested audits --</p> <p>19 A. I don't.</p> <p>20 Q. -- be done under the FMI audit</p> <p>21 program?</p> <p>22 A. I don't recall. I know that</p> <p>23 some producers undertook audits.</p> <p>24 Q. Can you pull out Brown-39,</p> <p>25 please. This is the letter that was marked</p>	<p style="text-align: right;">340</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Animal Welfare Audit Program is an NCCR and</p> <p>3 FMI program, not an SES program. Is that</p> <p>4 accurate?</p> <p>5 MR. WILDERS: Asked and</p> <p>6 answered.</p> <p>7 THE WITNESS: We're talking</p> <p>8 about semantics here, and I'll tell</p> <p>9 you quite frankly, I'm not sure of the</p> <p>10 context in which Frank Bryant was</p> <p>11 responding to Mr. Gregory. It sounds</p> <p>12 as if he's concerned about something</p> <p>13 that Mr. Gregory has implied or said.</p> <p>14 So I really can't answer your</p> <p>15 question.</p> <p>16 BY MS. SUMNER:</p> <p>17 Q. FMI and UEP worked together on</p> <p>18 FMI's animal welfare program. Correct?</p> <p>19 MR. PATTON: Objection. Leading</p> <p>20 and vague.</p> <p>21 THE WITNESS: Not exactly. We</p> <p>22 collaborated on the program from the</p> <p>23 context of we shared with -- UEP</p> <p>24 shared with us their guidelines. We</p> <p>25 shared with them the results of the</p>
<p style="text-align: right;">339</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 from SES to Gene Gregory.</p> <p>3 A. Okay. Brown-39. It's not the</p> <p>4 official one. Okay. I know it's been 12</p> <p>5 years since I've seen these documents so you</p> <p>6 have to bear with me. I don't remember every</p> <p>7 word on all of them or even recall getting</p> <p>8 any of them. I have it.</p> <p>9 Q. I want to direct your attention</p> <p>10 to the second paragraph, last two sentences,</p> <p>11 Mr. Bryant from SES wrote "AWAP...", and</p> <p>12 that's the FMI-NCCR animal welfare program.</p> <p>13 Correct?</p> <p>14 A. That's the audit.</p> <p>15 Q. "...is an NCCR and FMI program,</p> <p>16 not an SES program." Is that accurate?</p> <p>17 A. He was speaking to the</p> <p>18 guidelines themselves. SES had nothing to do</p> <p>19 with developing the guidelines. Their job</p> <p>20 was to take the guidelines, develop training</p> <p>21 materials around them, develop checklists and</p> <p>22 certify auditors based on specific criteria</p> <p>23 and experience in animal welfare and animal</p> <p>24 husbandry and help execute the audits.</p> <p>25 Q. What he wrote there was the</p>	<p style="text-align: right;">341</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 review and recommendations of our</p> <p>3 animal welfare experts. If they had</p> <p>4 questions about certain things or</p> <p>5 wanted to explain certain procedures</p> <p>6 to us, we gave them that opportunity.</p> <p>7 In some cases they were technical</p> <p>8 issues. We would make sure that there</p> <p>9 was one of our expert advisors there</p> <p>10 who was knowledgeable about their</p> <p>11 industry. So that is the process by</p> <p>12 which we collaborated.</p> <p>13 BY MS. SUMNER:</p> <p>14 Q. And that collaboration was the</p> <p>15 basis of the industry-wide approach that FMI</p> <p>16 advocated and that we talked about earlier</p> <p>17 this morning. Correct?</p> <p>18 MR. WILDERS: Objection.</p> <p>19 Leading. Vague.</p> <p>20 THE WITNESS: We were not going</p> <p>21 to tell our suppliers what to do, just</p> <p>22 as we were not going to tell our</p> <p>23 members what to do. Our role was</p> <p>24 simply to put together the policy and</p> <p>25 program that would enhance animal</p>

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<p style="text-align: right;">342</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 welfare for animals in agriculture</p> <p>3 used for food.</p> <p>4 MS. SUMNER: I'm going to move</p> <p>5 to strike that answer as</p> <p>6 non-responsive and I'm going to ask</p> <p>7 the question again.</p> <p>8 BY MS. SUMNER:</p> <p>9 Q. Ms. Brown, I know we're -- it's</p> <p>10 been a long day and we're really close to the</p> <p>11 end, but if I can ask you to just listen to</p> <p>12 the question and respond to the question, it</p> <p>13 will speed us along and get us all out of</p> <p>14 here.</p> <p>15 MR. WILDERS: Disagree that it</p> <p>16 was not responsive.</p> <p>17 BY MS. SUMNER:</p> <p>18 Q. The question was the</p> <p>19 collaboration, and I'm using your word from</p> <p>20 the prior answer which I would be happy to</p> <p>21 read back to you, that you described between</p> <p>22 FMI and UEP was the industry-wide approach</p> <p>23 that we discussed earlier this morning.</p> <p>24 Correct?</p> <p>25 MR. WILDERS: Asked and</p>	<p style="text-align: right;">344</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 would also like to know specifically</p> <p>3 when you talk about collaboration,</p> <p>4 what elements of collaboration you are</p> <p>5 asking about.</p> <p>6 BY MS. SUMNER:</p> <p>7 Q. I'm using your words, Ms.</p> <p>8 Brown.</p> <p>9 A. I understand that.</p> <p>10 MR. PATTON: Let her finish her</p> <p>11 answer.</p> <p>12 THE WITNESS: My words were</p> <p>13 related to UEP. You're now taking it</p> <p>14 in a broader context and I don't</p> <p>15 understand how you're trying to ask</p> <p>16 the question. So I would like to have</p> <p>17 some more specific -- more specificity</p> <p>18 in your question because to me it</p> <p>19 seems rather general and vague and I'm</p> <p>20 not sure as to what you're asking</p> <p>21 specifically.</p> <p>22 BY MS. SUMNER:</p> <p>23 Q. As of June 2002, FMI</p> <p>24 recommended the UEP guidelines to its</p> <p>25 members. Correct?</p>
<p style="text-align: right;">343</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 answered.</p> <p>3 THE WITNESS: We used similar</p> <p>4 communication tools with all of the</p> <p>5 producer groups.</p> <p>6 BY MS. SUMNER:</p> <p>7 Q. Again, that's not my question.</p> <p>8 My question is the collaboration --</p> <p>9 A. You're talking about -- excuse</p> <p>10 me. Go ahead, finish your question.</p> <p>11 Q. I'm not talking about UEP</p> <p>12 specifically. The collaboration between UEP</p> <p>13 and FMI is part of the industry-wide approach</p> <p>14 that FMI embraced and that we talked about</p> <p>15 earlier this morning. Correct?</p> <p>16 MR. WILDERS: Objection. Vague,</p> <p>17 and asked and answered.</p> <p>18 THE WITNESS: You're going to</p> <p>19 have to be more specific. I'd like to</p> <p>20 know what in -- what you're referring</p> <p>21 to specifically that we talked about</p> <p>22 this morning because this was a very</p> <p>23 broad topic and there were many</p> <p>24 questions that you asked about it. So</p> <p>25 I would like to know that. And I</p>	<p style="text-align: right;">345</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. We did not -- what we did was</p> <p>3 we informed our members that our experts</p> <p>4 endorsed their guidelines. If that is the</p> <p>5 context in which we recommended it, we</p> <p>6 informed our members that our experts</p> <p>7 endorsed their guidelines with exceptions.</p> <p>8 Q. Do you recall that in your</p> <p>9 June 2002 interim report which was made</p> <p>10 publicly available and distributed to all of</p> <p>11 your members you wrote that FMI recommends</p> <p>12 the UEP guidelines?</p> <p>13 MR. WILDERS: Objection.</p> <p>14 Misstates the testimony.</p> <p>15 THE WITNESS: Written into it,</p> <p>16 yes.</p> <p>17 BY MS. SUMNER:</p> <p>18 Q. I'd like you to turn to Exhibit</p> <p>19 2, please.</p> <p>20 MR. WILDERS: Can we get a time</p> <p>21 from the defense? I was cut off</p> <p>22 yesterday, so...</p> <p>23 MR. GREEN: Off the record.</p> <p>24 Where are we timewise?</p> <p>25 VIDEOGRAPHER: Off the record at</p>

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<p style="text-align: right;">346</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 6:36.</p> <p>3 - - -</p> <p>4 (A recess was taken.)</p> <p>5 - - -</p> <p>6 VIDEOGRAPHER: Back on the</p> <p>7 record at 6:38.</p> <p>8 BY MS. SUMNER:</p> <p>9 Q. Ms. Brown, if you could pull</p> <p>10 out Exhibit 2 which is the article that you</p> <p>11 authored. I'd like to direct your attention</p> <p>12 to page 658 of that article.</p> <p>13 A. 658, is that correct?</p> <p>14 Q. Yes, 658. Are you there?</p> <p>15 A. I'm there.</p> <p>16 Q. The second full paragraph</p> <p>17 begins, "As each commodity group submits its</p> <p>18 own guidelines, the experts convene to review</p> <p>19 the documents and supporting science and</p> <p>20 references."</p> <p>21 Is that an accurate statement?</p> <p>22 A. Correct.</p> <p>23 Q. Then you wrote the last</p> <p>24 sentence in that paragraph, "When the experts</p> <p>25 are satisfied with the content of the</p>	<p style="text-align: right;">348</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 statement?</p> <p>3 A. What we have -- what we did was</p> <p>4 we notified our members of the availability</p> <p>5 of the guidance document and also notified</p> <p>6 them that those guidelines with exceptions</p> <p>7 have been endorsed by our experts.</p> <p>8 MS. SUMNER: I have no further</p> <p>9 questions, but I believe Mr. Barnes</p> <p>10 has just a few cross-examination</p> <p>11 questions.</p> <p>12 - - -</p> <p>13 EXAMINATION</p> <p>14 - - -</p> <p>15 BY MR. BARNES:</p> <p>16 Q. Mrs. Brown -- Ms. Brown, I'm</p> <p>17 sorry. I know it's been a long day. I'll</p> <p>18 try to be very brief. I'm sorry I'm a little</p> <p>19 disorganized, I was back there in the nickel</p> <p>20 seats and I didn't have anything really to</p> <p>21 write on, so I apologize if I stumble around</p> <p>22 a little bit.</p> <p>23 A. That's okay. I had a member</p> <p>24 from the south who told me that when anybody</p> <p>25 opens with that kind of friendly country boy</p>
<p style="text-align: right;">347</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 guidelines, the FMI and the NCCR provide</p> <p>3 public endorsement of the guideline..."</p> <p>4 Is that an accurate statement?</p> <p>5 MR. WILDERS: Asked and</p> <p>6 answered.</p> <p>7 THE WITNESS: As I, you know,</p> <p>8 have mentioned several times, when we</p> <p>9 speak of endorsement, we speak that we</p> <p>10 have a group of experts who have</p> <p>11 endorsed those guidelines and we are</p> <p>12 endorsing their endorsement.</p> <p>13 BY MS. SUMNER:</p> <p>14 Q. But that's not what your</p> <p>15 article says, is it?</p> <p>16 MR. WILDERS: Objection.</p> <p>17 Argumentative.</p> <p>18 THE WITNESS: It may not be what</p> <p>19 the article says, but I wasn't writing</p> <p>20 it for a legal treatise.</p> <p>21 BY MS. SUMNER:</p> <p>22 Q. And then it says the FMI-NCCR</p> <p>23 notified their respective members of the</p> <p>24 availability of the guidance document and its</p> <p>25 endorsed status. Is that an accurate</p>	<p style="text-align: right;">349</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 statement, to grab your wallet.</p> <p>3 Q. Well, talking about country</p> <p>4 boys, you're fortunate today because you have</p> <p>5 not only one, but two lawyers for one of</p> <p>6 FMI's largest members, Kroger, participating</p> <p>7 in this deposition. You're aware of that,</p> <p>8 are you not?</p> <p>9 A. I have heard that stated.</p> <p>10 Q. Are you also aware that in</p> <p>11 addition to Kroger, I believe Mr. Randall</p> <p>12 mentioned this, they represent Safeway,</p> <p>13 another member. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. Albertsons. Correct?</p> <p>16 A. He did mention that.</p> <p>17 Q. How about Hy-Vee, were they</p> <p>18 mentioned, they represent Hy-Vee?</p> <p>19 A. I don't recall them mentioning</p> <p>20 that.</p> <p>21 Q. Hy-Vee is an FMI member?</p> <p>22 A. They were when I left.</p> <p>23 Q. How about A&P, FMI member when</p> <p>24 you left?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">350</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. They -- you're aware that --</p> <p>3 A. They are regional chains, you</p> <p>4 know.</p> <p>5 Q. Pardon me?</p> <p>6 A. They're regional chains now.</p> <p>7 Q. A&P, I know. When I was a boy,</p> <p>8 a country boy, growing up in Northeastern</p> <p>9 Pennsylvania, we -- that was one of our</p> <p>10 stores, an A&P.</p> <p>11 How about H.E. Butt, former</p> <p>12 member -- pardon me, a member when you were</p> <p>13 associated with FMI?</p> <p>14 A. Part of the time I was</p> <p>15 associated with FMI, when I worked on this</p> <p>16 issue, H.E. Butt was not a member.</p> <p>17 Q. You're aware that the two</p> <p>18 Kroger lawyers also represent H.E. Butt?</p> <p>19 A. I'm not aware of that.</p> <p>20 Q. I will make that representation</p> <p>21 to you. Now --</p> <p>22 A. Whose on the phone?</p> <p>23 Q. I have -- whose on the -- I</p> <p>24 have no idea who is on the phone.</p> <p>25 We've already heard testimony</p>	<p style="text-align: right;">352</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 specifically. As a matter of fact, I think</p> <p>3 Ron Pearson of Hy-Vee was the chairman of FMI</p> <p>4 at the time.</p> <p>5 Q. Do you recall an approximate</p> <p>6 time period?</p> <p>7 A. I don't.</p> <p>8 Q. I'm just testing.</p> <p>9 A. When I retired, I walked away,</p> <p>10 turned out the light and closed the door. I</p> <p>11 don't know the answer to that question.</p> <p>12 Q. I understand. But am I correct</p> <p>13 that when the cap, the dues cap was removed,</p> <p>14 then members, very large members such as</p> <p>15 Kroger would end up paying significantly more</p> <p>16 dues than other members. There was no cap on</p> <p>17 Kroger's dues. Right?</p> <p>18 A. The entire schedule was</p> <p>19 adjusted.</p> <p>20 Q. Okay.</p> <p>21 A. So it was adjusted so that the</p> <p>22 companies in the middle and the bottom, when</p> <p>23 there was a cap, as their business grew,</p> <p>24 their dues went up, but as the companies at</p> <p>25 the cap, their business grew, their dues did</p>
<p style="text-align: right;">351</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 that your dues are based on your member</p> <p>3 sales. Do you recall, as you sit here today,</p> <p>4 and I realize you haven't been with the</p> <p>5 organization for four years, but you had --</p> <p>6 five years, pardon me, thank you for the</p> <p>7 correction, but you had been with them for 40</p> <p>8 years which is remarkable. Do you recall as</p> <p>9 you sit here today whether Kroger and Safeway</p> <p>10 were two of FMI's largest dues paying</p> <p>11 members?</p> <p>12 A. It would depend upon at what</p> <p>13 point in time you were speaking. The</p> <p>14 original dues schedule that was developed had</p> <p>15 a cap on it so that a company could not -- so</p> <p>16 that there was a limit at which a company,</p> <p>17 their volume even if it went above that, it</p> <p>18 was a cap. And then the dues were then</p> <p>19 scaled down exponentially based on volume.</p> <p>20 Q. What was the cap?</p> <p>21 A. I don't recall specifically.</p> <p>22 Q. Generally?</p> <p>23 A. 160,000 maybe.</p> <p>24 Q. When was the cap removed?</p> <p>25 A. I don't recall that</p>	<p style="text-align: right;">353</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 not. So it was considered an issue of</p> <p>3 fairness.</p> <p>4 Q. I understand, but the records</p> <p>5 of FMI would tell us, I assume, exactly what</p> <p>6 the cap was, how long it was in existence,</p> <p>7 when it was taken off and what these very</p> <p>8 large organizations actually paid in dues. I</p> <p>9 assume that's correct.</p> <p>10 MR. WILDERS: Objection. Vague.</p> <p>11 THE WITNESS: I don't know.</p> <p>12 BY MR. BARNES:</p> <p>13 Q. You don't know if the records</p> <p>14 would show that?</p> <p>15 A. Well, I don't know -- I mean,</p> <p>16 I -- member records of that nature were not</p> <p>17 shared a lot internally, so I don't know the</p> <p>18 answer to that question.</p> <p>19 Q. But when you were there,</p> <p>20 records of that nature were kept, I assume?</p> <p>21 A. Oh, yes.</p> <p>22 Q. Do you recall that Kroger and</p> <p>23 Safeway were members of FMI from let's take</p> <p>24 the time period 1999 up to and including the</p> <p>25 time you left the organization?</p>

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<p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Would that be true for Safeway</p> <p>4 as well?</p> <p>5 A. As I recall.</p> <p>6 Q. Albertsons?</p> <p>7 A. That would depend upon who</p> <p>8 owned Albertsons at the time. When they were</p> <p>9 owned by American Stores, they were not</p> <p>10 members of FMI.</p> <p>11 Q. How about SuperValu, were they</p> <p>12 members from the period approximately 1999 up</p> <p>13 until the time you left?</p> <p>14 A. Yes.</p> <p>15 Q. How about Associated Wholesale</p> <p>16 Grocers, I almost forgot them, were they</p> <p>17 members during that entire time period?</p> <p>18 A. Yes.</p> <p>19 Q. And you mentioned, I believe,</p> <p>20 in response to a question, I think, that</p> <p>21 there was a gentleman named Mr. Ball who was</p> <p>22 a member.</p> <p>23 A. He was on our board.</p> <p>24 MR. WILDERS: Objection. You</p> <p>25 asked for extra time and now you're</p>	<p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you know a Douglas Carolan?</p> <p>3 A. No.</p> <p>4 Q. How about a --</p> <p>5 A. That sounds familiar. But no.</p> <p>6 Q. If I told you he was on your</p> <p>7 Board of Directors as a representative of</p> <p>8 Associated Wholesale Grocers, would that</p> <p>9 refresh your recollection?</p> <p>10 A. You would have to tell --</p> <p>11 MR. RANDALL: Objection. This</p> <p>12 is really not responsive to anything</p> <p>13 that we've asked on direct examination.</p> <p>14 BY MR. BARNES:</p> <p>15 Q. How about Gary Phillips, do you</p> <p>16 know Gary Phillips?</p> <p>17 MR. RANDALL: I'm making an</p> <p>18 objection.</p> <p>19 MR. BARNES: You made it.</p> <p>20 MR. PATTON: You interrupted his</p> <p>21 objection every time.</p> <p>22 MR. BARNES: What's your</p> <p>23 objection?</p> <p>24 MR. WILDERS: I also think</p> <p>25 you're out of time.</p>
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<p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 replowing ground that we had in the</p> <p>3 30(b)(6).</p> <p>4 BY MR. BARNES:</p> <p>5 Q. We can ignore him, just answer</p> <p>6 my question.</p> <p>7 MR. GREEN: Actually, I make the</p> <p>8 same objection.</p> <p>9 BY MR. BARNES:</p> <p>10 Q. I'm sorry, I don't want to be</p> <p>11 repetitive. Was --</p> <p>12 A. Do a better job then.</p> <p>13 Q. I'll try. I'll try. You keep</p> <p>14 me on my toes.</p> <p>15 Was Associated Wholesale</p> <p>16 Grocers a member of the Board of Directors</p> <p>17 during the entire time -- pardon me, from</p> <p>18 approximately 1999 until the time you left?</p> <p>19 MR. WILDERS: Same objection.</p> <p>20 THE WITNESS: We had a system</p> <p>21 where there was a three-year limit on</p> <p>22 a member being on the board. So you</p> <p>23 came on and went off. There was no</p> <p>24 such thing as a company seat.</p> <p>25 BY MR. BARNES:</p>	<p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. RANDALL: That if -- you</p> <p>3 know, if you're going to start a new</p> <p>4 line of questioning right now, we'd</p> <p>5 like to go back on the record and have</p> <p>6 a chance to respond. And given the</p> <p>7 amount of time, I just don't think</p> <p>8 it's appropriate.</p> <p>9 MR. BARNES: Your objection is</p> <p>10 noted.</p> <p>11 BY MR. BARNES:</p> <p>12 Q. Do you know a Gary Phillips?</p> <p>13 MR. GREEN: Two more questions</p> <p>14 and we're done.</p> <p>15 MR. BARNES: Two more, okay.</p> <p>16 I'll be quick. I'll withdraw the</p> <p>17 question about Gary Phillips.</p> <p>18 BY MR. BARNES:</p> <p>19 Q. You testified initially, and I</p> <p>20 wrote it down because I thought it was very</p> <p>21 incisive and really applied to, universally</p> <p>22 to senior association executives.</p> <p>23 A. This is where I grab my wallet?</p> <p>24 Q. No, no.</p> <p>25 A. Are you sure?</p>

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<p style="text-align: right;">358</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. I'm sure. I am sure.</p> <p>3 I believe you said, I may</p> <p>4 misquote this a little bit, so please bear</p> <p>5 with me, I believe you testified that there's</p> <p>6 very little a trade associate -- a trade</p> <p>7 association executive would do without the</p> <p>8 knowledge and consent of the members. Do you</p> <p>9 recall that testimony?</p> <p>10 A. Yes.</p> <p>11 Q. Would that be true regarding</p> <p>12 the knowledge and consent of the Board of</p> <p>13 Directors?</p> <p>14 A. Yes.</p> <p>15 Q. Did you keep the FMI Board of</p> <p>16 Directors fully informed while you were there</p> <p>17 regarding the animal welfare activities and</p> <p>18 recommendations of FMI?</p> <p>19 MR. WILDERS: Objection. Vague.</p> <p>20 Three questions.</p> <p>21 THE WITNESS: Through -- as I</p> <p>22 answered before, through the</p> <p>23 communications system that we had</p> <p>24 which included a weekly mailing which</p> <p>25 was a compendium of information about</p>	<p style="text-align: right;">360</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. MCKENNEY: Yeah. Standing</p> <p>3 objections, Mr. Green, about the</p> <p>4 30(b)(6).</p> <p>5 MR. GREEN: We're off the</p> <p>6 record.</p> <p>7 - - -</p> <p>8 (A discussion off the record</p> <p>9 occurred.)</p> <p>10 - - -</p> <p>11 VIDEOGRAPHER: Off the record at</p> <p>12 6:52.</p> <p>13 - - -</p> <p>14 (A recess was taken.)</p> <p>15 - - -</p> <p>16 VIDEOGRAPHER: We're back on the</p> <p>17 record at 6:53.</p> <p>18 MR. BARNES: Based on statement</p> <p>19 from FMI's counsel, I won't ask any</p> <p>20 questions, any further questions at</p> <p>21 this time, although I do have further</p> <p>22 questions, and may have even more if</p> <p>23 plaintiffs' lawyer is permitted to</p> <p>24 reexamine the witness.</p> <p>25 Thank you, Ms. Brown, for your</p>
<p style="text-align: right;">359</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 all of the programs that we had</p> <p>3 underway, public affairs, research,</p> <p>4 education, convention, et cetera, the</p> <p>5 board had communications it related to</p> <p>6 their meetings primarily. If a policy</p> <p>7 was passed by the board, we made sure</p> <p>8 that it was -- went out to them as</p> <p>9 they approved it.</p> <p>10 BY MR. BARNES:</p> <p>11 Q. Did anyone from Associated</p> <p>12 Wholesale Grocers, to your knowledge and</p> <p>13 recollection, ever voice an objection to any</p> <p>14 board policy regarding any animal welfare</p> <p>15 activities of FMI and your Expert Scientific</p> <p>16 Committee?</p> <p>17 A. Not that I'm aware.</p> <p>18 MR. WILDERS: Objection.</p> <p>19 Assumes facts not in evidence, and</p> <p>20 vague.</p> <p>21 MR. GREEN: Off the record.</p> <p>22 MR. MCKENNEY: I want to make a</p> <p>23 couple of objections on the record.</p> <p>24 MR. BARNES: You're going to</p> <p>25 make a couple?</p>	<p style="text-align: right;">361</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 time.</p> <p>3 THE WITNESS: Sure. I'm not</p> <p>4 going to agree to that necessarily.</p> <p>5 And I have a cat at home that's been</p> <p>6 alone since early this morning, so I'm</p> <p>7 not treating it very humanely if I'm</p> <p>8 here much longer.</p> <p>9 - - -</p> <p>10 EXAMINATION</p> <p>11 - - -</p> <p>12 BY MR. WILDERS:</p> <p>13 Q. Ms. Brown, Brad Wilders --</p> <p>14 MR. MCKENNEY: Just a couple of</p> <p>15 objections. Again, I'd like to object</p> <p>16 to the insufficiency of Dr.</p> <p>17 Hollingsworth's preparation on the</p> <p>18 2000 Animal Welfare Guidelines review</p> <p>19 that was raised in our direct</p> <p>20 examination of her last week and she</p> <p>21 replied that she did not have</p> <p>22 knowledge of that and that was within</p> <p>23 the scope of the 30(b)(6) topic.</p> <p>24 MR. GREEN: Could I ask you to</p> <p>25 restate is that?</p>

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<p style="text-align: right;">362</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. MCKENNEY: Yes. We asked</p> <p>3 questions concerning FMI's 2013 review</p> <p>4 of Producer Animal Welfare Guidelines</p> <p>5 such as and including the UEP Animal</p> <p>6 Welfare Guidelines. She responded</p> <p>7 that she did not have knowledge of</p> <p>8 that topic. And so we objected, that</p> <p>9 was in the scope of the deposition</p> <p>10 notice served. And we reserve our</p> <p>11 rights to recall Dr. Hollingsworth or</p> <p>12 another 30(b)(6) designee to examine</p> <p>13 FMI as to its corporate position about</p> <p>14 that 2013 effort.</p> <p>15 We also would like to note that</p> <p>16 testimony today and Dr.</p> <p>17 Hollingsworth's deposition there was</p> <p>18 previously unknown communications</p> <p>19 system that on a weekly basis</p> <p>20 transmitted reports to the FMI</p> <p>21 membership. Based on our review of</p> <p>22 the documents produced in this</p> <p>23 litigation, FMI has not collected and</p> <p>24 produced those materials, so we ask</p> <p>25 that FMI represent that it has engaged</p>	<p style="text-align: right;">364</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 right here and now that FMI conducted</p> <p>3 a search pursuant to the subpoena and</p> <p>4 pursuant to negotiations with defense</p> <p>5 counsel as to what exactly we would</p> <p>6 search for. We conducted that process</p> <p>7 and search thoroughly and produced</p> <p>8 every single document that mentioned</p> <p>9 any of the search terms that we</p> <p>10 searched for, every single document.</p> <p>11 MR. MCKENNEY: Including the</p> <p>12 communications department at FMI?</p> <p>13 MR. GREEN: Correct. Within the</p> <p>14 time scope of the discovery.</p> <p>15 MR. MCKENNEY: The witnesses</p> <p>16 have testified that there are these</p> <p>17 documents.</p> <p>18 MR. GREEN: No, they testified</p> <p>19 that there was the systems. They</p> <p>20 didn't testify that there were</p> <p>21 documents.</p> <p>22 MR. MCKENNEY: Well, it sounded</p> <p>23 like in Dr. Hollingsworth's deposition</p> <p>24 that there were communications sent</p> <p>25 regarding animal welfare in these</p>
<p style="text-align: right;">363</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 in a search for and production of such</p> <p>3 responsive materials. And if it has</p> <p>4 not, to produce those materials. And</p> <p>5 we, again, reserve our right to call</p> <p>6 witnesses to discuss those</p> <p>7 communications.</p> <p>8 We also note that there was --</p> <p>9 at Dr. Hollingsworth's deposition that</p> <p>10 she testified that the communications</p> <p>11 group conducted analyses regarding Web</p> <p>12 site hits and other media or analyses</p> <p>13 of media reports on animal welfare</p> <p>14 issues in the 2000 and 2002 time</p> <p>15 frame.</p> <p>16 Again, we have based, on our</p> <p>17 review of FMI's production, those have</p> <p>18 not been produced in this litigation</p> <p>19 and we ask that you represent that you</p> <p>20 searched for and produced those</p> <p>21 materials. And if you have not done</p> <p>22 so, to do so, and then we, again,</p> <p>23 reserve our rights to depose a witness</p> <p>24 on those topics.</p> <p>25 MR. GREEN: I will represent</p>	<p style="text-align: right;">365</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 weekly reports that we did not have.</p> <p>3 They conducted analyses --</p> <p>4 MR. GREEN: Again, I want to</p> <p>5 remind you we're talking about 15</p> <p>6 years ago.</p> <p>7 MR. MCKENNEY: If the answer is</p> <p>8 they don't exist, then that's the</p> <p>9 answer.</p> <p>10 MR. GREEN: I just represented</p> <p>11 that we provided everything we have.</p> <p>12 We provided 4,500 pages of documents</p> <p>13 as a nonparty to this proceeding.</p> <p>14 MR. PATTON: We should do</p> <p>15 this --</p> <p>16 MR. GREEN: I glad to do it. We</p> <p>17 provided three witnesses, provided</p> <p>18 4,500 pages of documents. We are not</p> <p>19 parties and if we get harassed further</p> <p>20 by the defendants or the plaintiffs in</p> <p>21 this case, we will seek sanctions.</p> <p>22 MR. WILDERS: Can I ask my two</p> <p>23 questions now?</p> <p>24 MR. BARNES: This deposition is</p> <p>25 over.</p>

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<p style="text-align: right;">366</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. WILDERS: Wait. I had two</p> <p>3 questions.</p> <p>4 MR. HUTCHINSON: I have an</p> <p>5 objection if Mr. Wilders is going to</p> <p>6 be permitted to ask additional</p> <p>7 questions. I haven't had the</p> <p>8 opportunity to ask the witness any</p> <p>9 cross-examination on any of Mr.</p> <p>10 Wilders' questions today. So I object</p> <p>11 to him --</p> <p>12 MR. WILDERS: You had an</p> <p>13 opportunity.</p> <p>14 MR. HUTCHINSON: Let me ask my</p> <p>15 cross then.</p> <p>16 MR. WILDERS: You already did.</p> <p>17 MR. HUTCHINSON: I haven't asked</p> <p>18 any questions on cross. I haven't</p> <p>19 asked a single question on</p> <p>20 cross-examination.</p> <p>21 MR. GREEN: What is the total</p> <p>22 amount of time that we've now spent</p> <p>23 today?</p> <p>24 MR. HUTCHINSON: I had</p> <p>25 30 seconds.</p>	<p style="text-align: right;">368</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 abided by those time limits in both</p> <p>3 Hollingsworth's deposition and this</p> <p>4 deposition today.</p> <p>5 MR. DAVIS: I'll just clarify,</p> <p>6 that agreement was subject to a</p> <p>7 unilateral representation by FMI's</p> <p>8 counsel that he did not intend to put</p> <p>9 his witness up for the collective</p> <p>10 14 hours that we would otherwise be</p> <p>11 entitled to since we each noticed it.</p> <p>12 And at no point did we affirmatively</p> <p>13 accept that, but rather came to terms</p> <p>14 on how we would deal with it should we</p> <p>15 try to accommodate his request.</p> <p>16 MR. PATTON: So what's good for</p> <p>17 the goose is good for the gander as</p> <p>18 the judge says. We've played fair.</p> <p>19 And you guys apparently are not happy,</p> <p>20 so what's new? What's new?</p> <p>21 MS. ANDERSON: That is -- is he</p> <p>22 asking the questions?</p> <p>23 MR. PATTON: The witness wants</p> <p>24 to go home. You got ten extra minutes</p> <p>25 and now you want more.</p>
<p style="text-align: right;">367</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. GREEN: I'm not asking about</p> <p>3 what you had.</p> <p>4 MR. HUTCHINSON: Well, I'm</p> <p>5 objecting to -- if I'm going to be</p> <p>6 denied the opportunity to ask</p> <p>7 questions, we -- this deposition</p> <p>8 should be concluded.</p> <p>9 MS. ANDERSON: How much time is</p> <p>10 on the record?</p> <p>11 MR. PATTON: Let me just note</p> <p>12 for the record --</p> <p>13 MR. WILDERS: We just spent like</p> <p>14 half an hour on --</p> <p>15 MR. PATTON: I just want to note</p> <p>16 for the record that Mr. Evans and I --</p> <p>17 I'm sorry, Mr. Davis and I had reached</p> <p>18 an agreement as to the division of</p> <p>19 time. And it was that the defendants</p> <p>20 would have four hours today and the</p> <p>21 plaintiffs would have three and they</p> <p>22 got to go first. And Ms.</p> <p>23 Hollingsworth's deposition -- Dr.</p> <p>24 Hollingsworth's deposition, we got</p> <p>25 four hours and they got three. And we</p>	<p style="text-align: right;">369</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. GREEN: Proceed with your</p> <p>3 questions.</p> <p>4 MR. HUTCHINSON: For the record,</p> <p>5 I object to this examination and I</p> <p>6 move to strike.</p> <p>7 MR. WILDERS: Your objection is</p> <p>8 noted.</p> <p>9 BY MR. WILDERS:</p> <p>10 Q. Ms. Brown, you testified</p> <p>11 earlier about an FMI or SES audit program.</p> <p>12 If a producer agreed to go through one of</p> <p>13 these audits, were the results of those</p> <p>14 audits available to FMI?</p> <p>15 A. No.</p> <p>16 Q. Were the results of any UEP</p> <p>17 audits available to FMI?</p> <p>18 A. FMI as an entity?</p> <p>19 Q. Yes.</p> <p>20 A. No.</p> <p>21 MR. WILDERS: I have no further</p> <p>22 questions.</p> <p>23 MR. BARNES: I have one</p> <p>24 question.</p> <p>25 MR. GREEN: Is it redirect?</p>

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<p style="text-align: right;">370</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 MR. BARNES: It's redirect. One</p> <p>3 question.</p> <p>4 THE WITNESS: Is it on the</p> <p>5 topic?</p> <p>6 MR. BARNES: Yes, ma'am.</p> <p>7 - - -</p> <p>8 FURTHER EXAMINATION</p> <p>9 - - -</p> <p>10 BY MR. BARNES:</p> <p>11 Q. Did FMI ever ask UEP for the</p> <p>12 results of any particular audits of its</p> <p>13 members?</p> <p>14 A. No.</p> <p>15 MR. HUTCHINSON: Mr. Green, can</p> <p>16 I ask some questions now?</p> <p>17 MR. GREEN: Is it a new topic?</p> <p>18 MR. HUTCHINSON: It's cross of</p> <p>19 Mr. Wilders' examination.</p> <p>20 MR. WILDERS: I didn't ask any</p> <p>21 questions about Sparboe, your client.</p> <p>22 MR. GREEN: I think this -- you</p> <p>23 know, the problem is it will continue</p> <p>24 after that. So let's draw the line</p> <p>25 here. Thank you.</p>	<p style="text-align: right;">372</p> <p>1</p> <p>2 CERTIFICATE</p> <p>3</p> <p>4</p> <p>5 I do hereby certify that I am a Notary</p> <p>6 Public in good standing, that the aforesaid</p> <p>7 testimony was taken before me, pursuant to</p> <p>8 notice, at the time and place indicated; that</p> <p>9 said deponent was by me duly sworn to tell</p> <p>10 the truth, the whole truth, and nothing but</p> <p>11 the truth; that the testimony of said</p> <p>12 deponent was correctly recorded in machine</p> <p>13 shorthand by me and thereafter transcribed</p> <p>14 under my supervision with computer-aided</p> <p>15 transcription; that the deposition is a true</p> <p>16 and correct record of the testimony given by</p> <p>17 the witness; and that I am neither of counsel</p> <p>18 nor kin to any party in said action, nor</p> <p>19 interested in the outcome thereof.</p> <p>20</p> <p>21 WITNESS my hand and official seal this</p> <p>22 27th day of April, 2014.</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">_____ Notary Public</p>
<p style="text-align: right;">371</p> <p>1 KAREN BROWN - HIGHLY CONFIDENTIAL</p> <p>2 VIDEOGRAPHER: This is the end</p> <p>3 of tape four in the videotape</p> <p>4 deposition of Karen Brown. This</p> <p>5 deposition concludes at 7:01.</p> <p>6 - - -</p> <p>7 (Witness excused.)</p> <p>8 - - -</p> <p>9 (Deposition concluded at 7:01</p> <p>10 p.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">373</p> <p>1</p> <p>2 INSTRUCTIONS TO WITNESS</p> <p>3</p> <p>4 Please read your deposition over</p> <p>5 carefully and make any necessary corrections.</p> <p>6 You should state the reason in the</p> <p>7 appropriate space on the errata sheet for any</p> <p>8 corrections that are made.</p> <p>9 After doing so, please sign the errata</p> <p>10 sheet and date it.</p> <p>11 You are signing same subject to the</p> <p>12 changes you have noted on the errata sheet,</p> <p>13 which will be attached to your deposition.</p> <p>14 It is imperative that you return the</p> <p>15 original errata sheet to the deposing</p> <p>16 attorney within thirty (30) days of receipt</p> <p>17 of the deposition transcript by you. If you</p> <p>18 fail to do so, the deposition transcript may</p> <p>19 be deemed to be accurate and may be used in</p> <p>20 court.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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